Vol. IV

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 430

SPENCER KELLOGG & SONS, INC., AS OWNER OF THE MOTORBOAT "LINSEED KING," ETC., PETITIONER,

vs.

HILDA M. HICKS, AS ADMINISTRATRIX, ETC., ET AL.

No. 444

VERA ALEXANDER, ADMINISTRATRIX OF THE ESTATE OF JAMES ALEXANDER, DECEASED, ET AL., PETITIONERS,

vs.

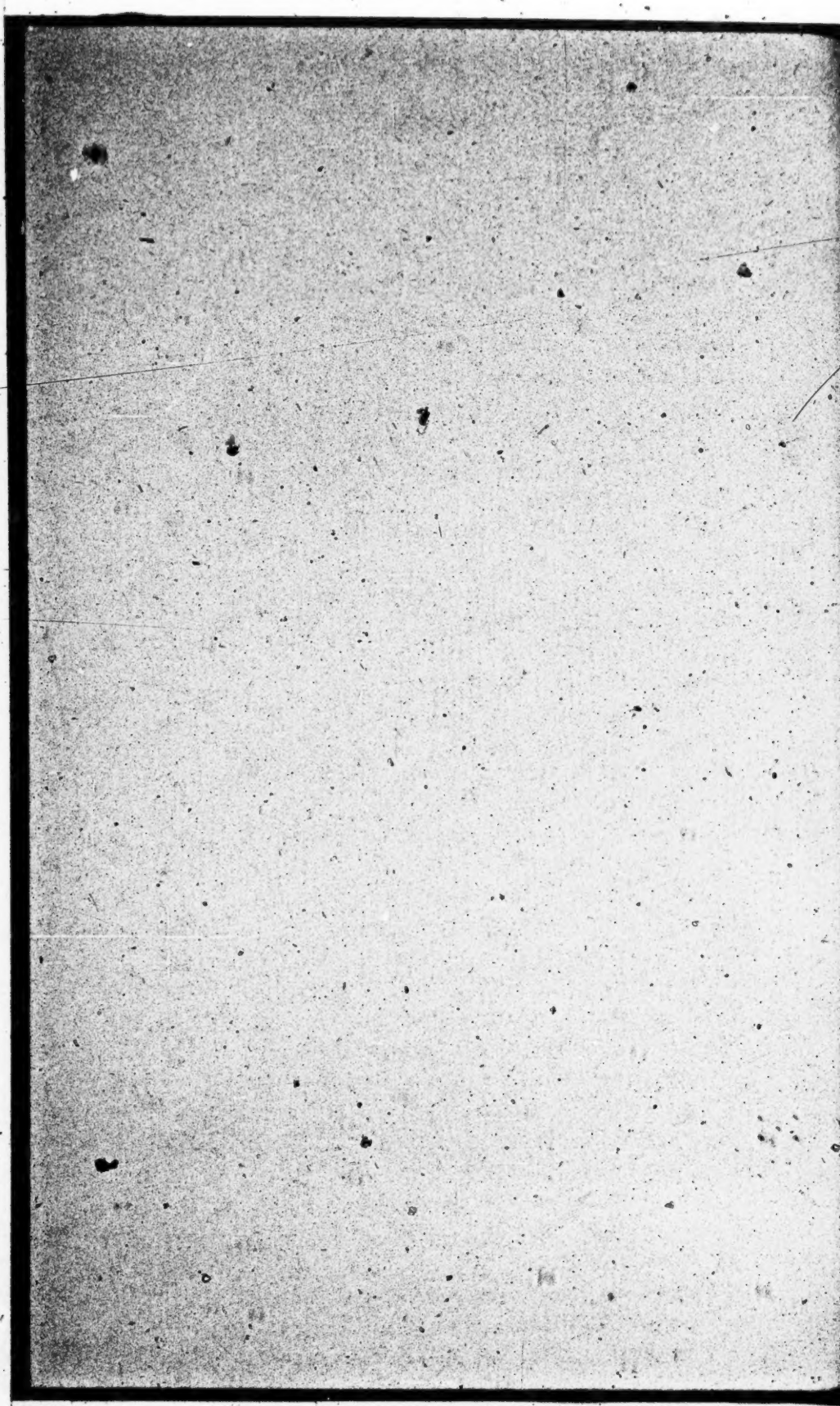
SPENCER KELLOGG & SONS, INC.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONS FOR CERTIORARI FILED OCTOBER 2, OCTOBER 7, 1931

CERTIORARI GRANTED NOVEMBER 23, 1931

(36,244, 36,258)



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JOHN I. HALE, called as a witness on behalf of the petitioner, in rebuttal, being duly sworn, testified as follows: 5665

Direct examination by Mr. Englar:

Q. Mr. Hale, what is your occupation? A. I am a naval constructor.

Q. Are you an officer in the United States Navy? A. Yes, sir.

Q. What is your rank? A. Lieutenant Commander.

Q. Will you tell us just what experience you have had, that is, what training and experience you have had, with respect to ships and shipping? A. 5666
I graduated from the Naval Academy with the Class of 1914, and I took a Post-Graduate course at Massachusetts Institute of Technology in naval construction and marine engineering, and was given the degree of Master of Science. I also took a similar course at Columbia University on ship stabilization, gyro-stabilization of ships.

Q. Were you assigned to those courses by the Navy Department? A. I was, yes, sir. I was instructor at the Naval Academy for three years in the Department of Marine Engineering and Naval Construction. I spent about two years and eight 5667
months at sea; during that time I have instructed enlisted men in the handling of small boats. I have also had charge of the watch at sea on the Flagship of the Atlantic Fleet in formation.

Q. Have you been the officer in charge of small boats? A. I was assistant shop superintendent in charge of the boat shop at Norfolk for about a year. During that time we built a great many boats; of one type we built about 300. We built five 50-foot steamers, turbine driven steamers. I

5668 superintended the building of twenty one 110-feet sub chasers. I also had the maintenance and repair of small boats at the Norfolk Yard for the same period of time, and also of about 50 to 60 submarine chasers. I had charge of the boat shop as shop superintendent in the Navy Yard, New York, for about eight months. During that time we built a boat which was assigned as the tender for the "Mayflower", for the use of the President. I was put on the initial detail design of that boat, and it was later turned over to another officer.

Q. Does the Navy have certain types of small
5669 boats that are used all over the country wherever naval vessels are? A. Of power boats we have two general types, motor launches and motorboats. The motor launches are used to carry Liberty parties back and forth from the ships to shore, and also for working parties. The motorboats are used for Admiral's barges and for officers' boats. The motorboats are higher speed boats than the motor launches.

Q. The boats that carry the larger number of men are the motor launches? A. The motor launches, yes, sir.

Q. What types do you have of those? A. We
5670 have a 50-foot boat, that is, 50 feet in length between perpendiculars, a 40-foot boat, 36-foot boat, 33-foot boat, 30-foof boat, and a 24-foot boat. Those launches are driven by gasoline engines.

Q. Have you had charge of the operation of those boats as an officer on one of them? A. As the officer of the watch I have loaded a great many Liberty parties into these boats, the 50's and 40's, and as assistant patrol officer I have loaded Liberty parties in practically all of those boats. I do not remember the exact length, but all of

them, including those used from destroyers, the 24-foot boat, from the cruisers, the 26 to 33-foot boats, and the battleships 40 to 50-foot boats. 5671

Q. Is each type of boat rated for a certain number of men? A. We rate the capacity of the boats, that is, the carrying capacity in men, by dividing the internal volume by 10 and then after that we subtract a number of men equal to the weight of the machinery in order to get the capacity of the boat in men.

Q. What I am trying to bring out is not how you do it, but whether it is in fact done. A. It is done.

Q. Each one of these types of boats is rated for a certain number of men? A. We determine the capacity of the boat, and then put the men in to see how the boat gets with that number in her. 5672

Q. What is the rated capacity of your 40-foot launch? A. 90 men.

Q. And your 50-foot launch? A. 190 men.

Q. Do those boats have watertight bulkheads? A. The 40-foot has not, the 50-foot has.

Q. Do they have metal sheathing? A. I would like to qualify that a little more. The 40-foot boat has a bulkhead which is semi-watertight between the forward compartment and the engine compartment. That bulkhead is put in there primarily to strengthen and stiffen the boat, and also in case of fires, to act as a barrier to the spreading of the gasoline flames forward in the boat. 5673

Q. About where is that bulkhead with reference to the bow and the stem? A. In the 40-footer the bulkhead is approximately 24 feet from the stem, that is, about 16 feet from the stern.

5674 Q. Would that bulkhead keep the boat afloat if she had a collision forward? A. No, sir, I do not think it would.

Q. It is not put there for that purpose? A. It isn't there, it isn't there for that purpose, and it isn't the full height of the depth of the boat, either.

Q. Do those boats have metal sheathing on them? A. They do not.

Q. Are they just summer craft or are they used the year around? A. They are used the year around in all sorts of weather.

5675 Q. Take your 40-foot launches; will you tell me what material and the thickness the planks are? A. The planking is, we build those boats using white cedar, Port Orford cedar, or cypress. White cedar, the thickness of the planking if 1¼ inch dimensioned.

Q. Where do they stow the life preservers on those boats? A. 1¼ inch thickness does not apply to all the boats, only the large ones, including the 50-footers. The life preservers are stowed under the thwarts, sometimes on top of the thwarts and under the gun-operating platform in the bow, and under the side benches in the engine compart-

5676 ment.

Q. Have you at my request examined the plans of the "Linseed King" which were prepared by Mr. Barrett and put in evidence here? A. I have, yes, sir.

Q. Exhibits 5, 6, 7 and 8? A. Yes, sir.

Q. Have you also at my request examined the boat a few weeks ago? A. I have.

Q. Did you at that time check the principal measurements shown in Mr. Barrett's plans? A. I did.

Q. Did you at that time measure the thickness of the wood at the place where this break was in the port bow? A. I did. 5677

Q. What did you find the thickness of the planking there? A. An inch and a quarter full, a little more than an inch and a quarter.

Q. What did you find to be the depth of the boat? A. 5 feet; that is, from the deck at the side to the bottom of the keel at about amidships.

Q. In so far as you have checked Mr. Barrett's plans did you find them accurate? A. I did, yes, sir.

Q. Now, will you state, Mr. Hale, whether in your opinion the "Linseed King," as shown in these plans, was a seaworthy boat to carry 86 men, say, across the Hudson River? A. I think she was. 5678

Mr. Englar: That is all.

Cross examination by Mr. Axtell:

Q. This launch you have spoken of, a 40-foot launch with 90 people in it? A. 90 in the 40-foot launch and 190 in the 50-foot launch.

Q. You are talking about human beings? A. Yes. 5679

Q. On this earth? A. Yes; I have ridden in them myself a great many times.

Q. Are you connected with the Submarine Department of the Navy? A. I have never been in submarines.

Q. Are you in the enlisted service now? A. I am in the Navy; I have been since 1916.

Q. Are you enlisted? A. I am not enlisted.

Q. Are you in the Navy now? A. I am; I am a commissioned officer.

5680 Q. You are in the service of the United States Government? A. I am.

Q. Are you on duty at the present moment? A. I am; at this present moment?

Q. Yes. A. I have authority to be off.

Q. Are you being compensated for your services in this matter? A. I have not been promised any compenstaion.

Q. Do you expect to be? A. Well, I expect to be compensated for my expenses.

Q. How much time have you put in on this case? A. About two days.

5681 Q. Did you go up to measure the boat? A. I did.

Q. Do you expect to be compensated for that? A. For that time?

Q. Yes. A. I think I will be.

Q. How much? A. I haven't any idea; I might say——

Q. Do you depend upon the character and quality of your evidence as to how much you will receive? A. I suppose it would depend upon that.

Q. Did you explain to your superior officer that you were to come here to testify as an ex-

5682 pert for pay for Spencer Kellogg & Sons in this instance? A. This is a personal matter, and it was unnecessary for me to explain——

Q. Did you explain it? A. I did not, and I would not.

Q. You will not? A. I say I did not and I would not; I have no occasion to.

Q. You did not? A. No.

Q. What is the beam of your 40-foot launches? A. 10 foot 6 inches.

Q. Is there any cabin on her? A. No cabin.

Q. Where is she kept when not in use? A. She 5683
is carried on the ship's deck.

Q. Has she got a sponson deck on the side? A. No.

Q. Any buoyancy tanks? A. No.

Q. Would she sink if she were filled with water? A. Yes, she would, if she were loaded.

Q. If she were empty and she were filled with water, would she sink? A. She probably would.

Q. Don't you know she wouldn't? That if she did she wouldn't be on a naval boat? A. She probably would with the machinery in her.

Q. Don't you know that all the regulations 5684
prevent you from carrying a sinkable lifeboat? A. That is not a lifeboat. We have lifeboats with buoyancy tanks to keep them from sinking.

Q. Do you carry life preservers on these boats? A. Yes.

Q. Where do you carry them? A. We carry them under the gun-operating platform forward.

Q. How many life preservers do you carry? A. We carry one for every man.

Q. You carry 90 life preservers? A. 90 life preservers.

Q. Of what kind? A. Kapok.

Q. What is the beam of this boat 4 feet from 5685
the stem?

Mr. Englar: Which boat?

Q. The 40-foot boat. A. I can tell you approximately; it is about 6 feet, 4 feet from the stem.

Q. This boat has a big bulge, she is round at the end? A. She is a fairly full boat.

Q. Very full? A. Fairly full.

5686 Q. And the same way at the stern? A. She has a square stern.

Q. She is 10 feet almost at the stern? A. No, sir, she is about 8 or 9.

Q. She is used to run men to and from the shore, isn't she? A. That, and she is used for transporting men from the ship to the shore, and vice versa.

Q. And to other ships? A. And to other ships.

Q. Just short runs? A. No; sometimes they are quite long, 5 or 6 miles. The ships are at anchor off Annapolis——

5687 Q. It depends upon the weather and other conditions as to how you load them and when they are used, doesn't it? A. The boats are used in all sorts of weather. Naturally, in heavy weather we do not load them to full capacity. That is left to the judgment of the officer on watch, the number to carry, and if the weather is rough——

Q. She would float even more than that, wouldn't she? She would float more than 90? A. Before the gunwales went under?

Q. Yes. A. Yes.

Q. Many more? A. Yes.

Q. What do you know about cabin boats used
5688 for ferryboats such as the "Linseed King"? A. We have no boats in the Navy exactly similar to the "Linseed King." We have these motorboats used for ferryboats from ship to the shore, but they are not similar to the "Linseed King."

Q. You would not think of packing 86 people in a boat as big as your 40-foot launches, even with her bigger beam, with a cabin on her, would you? A. Some of our 40 and 50-foot launches have a canopy over them. That is not the general practice, but some of them have it, and we do run them to capacity.

Q. They are not cabins; it is just a canopy and 5689
the canvas goes up? A. No, the canopy is lashed down along the side.

Q. Would you put 90 men in a boat of that size with a cabin over it and the canopy lashed down the side? A. In favorable weather, the ends of this canopy are open.

Q. You would have both ends open? A. The ends are open, yes.

Q. How are the men seated? A. They are on their thwarts, transverse across the boat.

Q. Does this boat you speak of have anything to grip hold of on the side, any line of knobs 5690
along the edge netted each one to the other one? A. No, sir.

Q. You are sure of that? A. You mean along the gunwale?

Q. Yes. A. Absolutely not.

Q. You are absolutely certain? A. I am certain there is no grip line alongside in the motor launches.

Q. Have you ever been in the service of any ferry company or any private corporation with regard to operating boats? A. No, I have not.

Q. How old are you? A. 37.

Q. How long have you been in the Navy? A. 5691
Since July 2, 1910.

Q. Did I understand you went up there and looked over what was left of the "Linseed King" lately? A. I went up, I believe it was the first Sunday after New Year's.

Q. And is that the first time you had anything to do with this case? A. That was the second time I had been in communication with the counsel in this case.

Q. Who did you get in touch with in this case? A. The counsel?

5692 Q. Which one? A. Mr. Nunnally, who was a naval officer.

Q. In Bigham, Englar & Jones' office? A. Yes, sir.

Q. You had some conversation with him about it? A. Very slight.

Q. Were you told you would be used as an expert? A. I was told I would probably be wanted as a witness.

Q. Were you doing this out of an act of friendliness for humanity, or were you doing it with the idea of being compensated for something you
5693 were going to sell? A. I did this because Mr. Nunnally asked me if—he called me up and wanted to see me about a small boat. I went over to the office and was there probably a half an hour, twenty minutes to thirty minutes; and as a result of that visit I made this trip up to the place where the "Linseed King" now is.

Q. Did you understand this boat had attempted to cross the Hudson River with about 90 people aboard her, she had struck ice and drowned about 60 of them? A. I understood she had started across the river.

Q. Did you understand what I have just told
5694 you were the facts when you went into this case? A. That 60 had been drowned?

Q. No. A. I knew there had been some drowned. I did not know the number. I had seen it in the newspapers.

Q. Did you go into this case with the idea of trying to help, to bring to this court some expert knowledge which would guide the Court in reaching a just and fair decision? A. Absolutely.

Q. That is why you are here? A. Absolutely.

Q. Not for any compensation you are to re-

ceive indirectly or directly through your friend, 5695
Mr. Nunnally, or the firm of Bigham, Englar & Jones? A. Not primarily.

Q. And you really do not know how much you will get? A. I haven't any idea whatever.

The Court: I think we have enough along that line.

Q. You said this boat was reasonably safe to carry 86 people with a cabin on her, with two little exits in front 22 inches wide, and one in the rear opening inwards, and all the windows opening in; is that your testimony? A. Abso- 5696
lutely.

Q. On what do you base that opinion? A. I base that on my knowledge of the stability and strength of boats, and on a comparison of the stability of our boats in comparison with this boat.

Q. Have you got a boat like that? A. Our 40-footer has about the same cubic internal volume as that boat, roughly.

Q. How do they get out of it? A. Go out over the gunwales.

Q. Over the side? A. Yes, except those that 5697
have the canvas, and there they go out the ends.

Q. You did not know this boat was constructed with windows like that from bow to stern? (Indicating sample in court room.) Four of them opening in that way toward the people, some 22 inches high, and 2 feet 6 inches above the seats, and 4 feet above the floor of the boat? A. I knew that.

Q. You did know that? A. I knew that from the plans.

5698 Q. You did know that, and you knew there were only two 22-inch wide openings in the bow? A. Those are wide enough.

Q. Two of them? A. Yes.

Q. And one in the rear opened inwards, you knew of that? A. I did.

Q. And do you say with all those facts in mind that boat was, in your opinion, reasonably safe to carry 86 people? A. Absolutely.

Mr. Axtell: That is all.

5699 Cross examination by Mr. Jayne:

Q. Did you know Mr. Nunnally before this case came up? A. I knew him in the Naval Academy; I have known him since about 1912.

Q. You were in the Naval Academy together? A. Yes, sir.

Q. Were you room mates? A. No.

Q. Close friends? A. He was in one class and I was in another. We were not close friends. I was more or less acquainted with him.

Q. You have been out with him up there at the Academy, seen him and knew him. How
5700 many men do you have in the Academy in one class? A. We had 154. Some classes run up to six and eight hundred, recent classes.

Q. Where have you seen these men taken from battleships and brought ashore? A. Narragansett Bay, Chesapeake Bay, the Kiel in Germany, Norway, Ireland——

Q. When were you up in Norway? A. 1911.

Q. What time of year? A. Summer time.

Q. When were you at Narragansett Pier? A. Narragansett Bay in the summer, and also I have

been there in the winter; I have been there in December; December or January, midwinter. 5701

Q. What do you mean, up there in a battleship? A. In a battleship, the "Wyoming".

Q. How long was she there in December or January? A. For a short while.

Q. How long? A. Probably three or four days; I do not remember. I do not think it was over a week or less than three days. It was just a short while.

Q. All right. What were the other places? When were you there, what time of the year? You mentioned some other places. Just repeat them again with the time of the year when you were at those places. 5702 A. I have been down here off Staten Island in December.

Q. How long were you off Staten Island in December? A. Altogether probably four days.

Q. What boat was that on? A. The "Wyoming". I have been in the North River in the "North Dakota" in November, and probably in the early part of December.

Q. How long were you in the North River in those boats? A. Altogether I was in the North River that time of the year about two weeks.

Q. That time of the year? A. Two weeks. 5703

Q. Was there any ice in the river at that time? A. Not at that time.

Q. It is customary, isn't it, with the majority of the boats, of the battleship fleet, to keep them in warm waters? A. No.

Q. No? A. You mean to keep the small boats in warm waters?

Q. No, your big boats. Don't they go south in the winter time? A. Not all of them.

Q. Well, a large majority of them? A. The fleet——

5704 Q. That is what I am talking about. I do not think it is any laughable matter. I think it is the truth. A. The fleet sails south after Christmas, as a rule. That is, the Atlantic Fleet, now called the Scouting Fleet.

Q. They do not hang around Narragansett Pier in the winter time? A. They sailed the 5th of January this last year.

Q. Every one of your sailors can swim? A. Not all of them.

Q. No, you do not require that of a sailor? A. We try to train them to swim.

5705 Q. How many men do you have that don't swim? A. A large percentage of them can swim after they have been in the service say eighteen months.

Q. After they have been in the service 18 months how many are there left that cannot swim? A. Oh, I would say roughly about 15 per cent.

Q. Cannot swim even then? A. Yes, about 15 per cent.

Q. Why don't you have these boats closed in with cabins on them? A. Because they carry them aboard ship and they have to be nested.

5706 We have some of these boats with canvas canopies that are sometimes used now, but they are not standard equipment any more because the ships didn't want to bother with them. Every time they piled the boats aboard they had to take the canvas off, so they were removed as standard equipment. The boats are nested three in a pile.

Q. Do you have any boats in Navy Yards ashore, for the use of those who live ashore? A. Yes, sir.

Q. They have cabins on them? A. They have canopies over some. 5707

Q. They have cabins? A. We have canopies on some of the boats; we have canopies on the motor launches, some of them.

Q. When an Admiral goes ashore, or a captain, he has a boat with a cabin? A. Yes.

Q. Did you ever see that boat crowded this way? A. Crowded which way?

Q. The way you have been talking about putting 90 men in a 40-foot boat. Did you ever see one of those launches with a cabin on crowded that way? A. I have seen these launches with all the seats taken and several standing up in them, with a cabin on. 5708

Q. Did you ever see them crowded as you have described, the way these 40-foot boats are crowded, the ones you are talking about? A. What do you mean by that?

Q. They do not crowd a cabin boat full of people like they do these open boats in the Navy; that isn't a practice, is it? A. That is not the point there at all——

Q. I am not asking you what the point is; you are looking for the point here, are you? A. No. 5709

Q. Will you just answer the question? A. What I am trying to tell you is, I am trying to give you an intelligent answer; that is all. Our motorboats as a rule are officers' boats, and ordinarily we do not have as many officers as sailors.

Q. When you ride ashore you do not go in that crowd, do you? A. I have many times come in a motor launch.

Q. Please answer the question.

5710 The Court: I do not think that is just fair.

The Witness: That hasn't anything to do with it.

The Court: Cannot you answer the question?

The Witness: When the commanding officer goes ashore in his boat, naturally the boat is not as full as the motor launches.

Q. Is it the practice to crowd the people into
5711 a closed launch in the same way that they are crowded into an open boat? A. Well, the only way I can answer that is from my experience. The motor launches with canopies over them are still filled with their capacity, 90 men or 190 men, depending on the size of the boat.

Mr. Jayne: If your Honor please, I think I am entitled to an answer to that question.

The Court: Let us have the question.

(The last question was repeated by the stenographer.)

5712 A. The motor launches fitted with canopies have the same capacity as the same length launches without the canopy.

Q. All right, it is the open launch that has the canopy, isn't it? A. It is the open launch.

Q. I am asking you a question, Mr. Hale, about the closed launches, such as you have in the Navy, or at your Navy Yards somewhere; they have a permanent wooden closed in cabin with glass windows in, and I am asking you is it the practice to crowd people into those closed permanent

cabin launches in the same way that you crowd people into these open boats? A. The launches fitted with the canopies are in effect closed. 5712

Q. I am not talking about those. Didn't you hear my question? Will you answer it? A. We haven't the type you are speaking of; we have the motorboats, and they are used for an entirely different purpose.

Q. Didn't you say you had launches on your ships with wooden closed cabins with windows in? A. No; we have demountable cabins; they are motorboats, not launches.

Q. All right, motorboats. I am asking you the question as to the practice where those boats have a permanent cabin, solid cabin, built on those boats, is it the practice to crowd people into those boats in the same way that you crowd people into these open launches? A. Yes; those boats do not have as many people as the others; relatively they do not have as many. They are speed boats. 5714

Q. Now, I suppose one thing that you are seeking to save on these battleships, inasmuch as you carry the boats on the battleship, is available space, isn't it? A. Yes.

Q. You are reducing the factor of safety as low as you can consistent with the passengers you have got and the type of vessel, in order not to take up too much of your fighting efficiency space, space for fighting efficiency, with these launches on your boat; isn't that so? A. We have these nested boats, and they are put on the battleships. Those boats are designed to carry as big a load as can safely and reasonably be done. 5715

Q. Was the inference in my question true or wasn't it? A. What do you mean?

5716 (The last preceding question was repeated by the stenographer: "Q. You are reducing the factor of safety as low as you can consistent with the passengers you have got and the type of vessel, in order not to take up too much of your fighting efficiency space, space for fighting efficiency, with these launches on your boat; isn't that so?")

A. Yes, with reasonable safety.

Q. And in considering reasonably safety you are considering the element that you have got young men that are sailors, that most of them
5717 swim and that your launches are open launches, as elements in determining how many they will carry, aren't you? A. No, in determining the number of men that a boat carries we do not consider whether they are swimmers or non-swimmers.

Q. You would crowd them in if they were women and children and old people, just as thick as if they were sailors, is that your answer? A. If they were women and children, I would not put them in as thick.

Q. If they were the average, ordinary laboring-class of men, some of them 60 and 70 years old,
5718 and with no training whatever, would you consider them as men in the class of women and children, or men in the class of your young able-bodied sailors? A. As a rule, a bunch of sailors in a boat can handle themselves somewhat better than the average civilian.

Q. So you consider that element, don't you? A. It is——

Q. As to how many the boat can carry? A. It is not directly considered, no.

Q. It is an element; you didn't determine how

big these boats were to be built, or how many they were to carry, yourself? There was a practice in the Navy long before you got there, and you are not the man whose judgment has guided the Navy in how big to build these boats and how many men to put in them? A. I have something to say about it, yes. 5719

Q. They didn't carry men this way before you came in, did they? A. Oh, yes.

Q. So it was decided by somebody before you came in the Navy, is that it? A. Yes; but if I thought it was not safe to carry that many men, I would make a recommendation on the subject and it would be considered. That is my job. 5720

Q. You do not mean to say that that might not have been considered as an element by the first man that developed the practice of operating these boats, do you? A. I doubt very much if it was considered. It may have been, but I take it, if you want me I will tell you how we determine the capacity of those boats.

Q. You are not arguing now, are you? A. No, but if you want to know how we do it, I will tell you.

Q. You are not arguing in favor of the petitioner instead of answering the question, are you? 5721

Mr. Englar: Your Honor, I object to that.

The Court: Sustained. You are a little argumentative in the course of your examination of the witness.

Q. Do you suppose the fact there was no cabin on these boats was taken into consideration, and the men could explode over the side of this boat

5722 in every direction, and that that 85 per cent. that could swim would dive out of the boat and leave the whole area of the boat for the 15 per cent. that couldn't, and that they could dive over the sides of the vessel anywhere— A. They have got to get to the side before they dive off.

Q. Wouldn't they be at the side? A. Not necessarily. Some of them would be at the side, but others will be within the outer lines.

Q. They would have the whole circumference of the sides and the rear and bow of this boat to get out of? A. They would have all around the

5723 periphery as means of escape.

Q. Do you suppose that was taken into consideration? A. When we put the canopies on they do not have the same capacity that way.

Q. I thought you said you did. A. Not the motor launches.

Q. You mean that they will not hold as many? A. They will hold just as many; we rate them for just as many men.

Q. You mean they will hold just as many without sinking with the canopy on as off? A. They will hold as many with the canopy on as without, and with reasonable safety.

5724 Q. It won't make any difference to the safety? A. It will make some difference, yes.

Q. You have studied this case, you say. How do you explain the fact that there were 27 dead bodies inside this launch; if this launch was safe for 87 people how do you explain the fact there were 27 bodies inside of it after it sank? A. I suppose there was somewhat of a panic and they couldn't all get out.

Q. Why couldn't they all get out if it was a safe

boat; a safe boat would have room for them to get out, wouldn't it? A. You cannot design a boat that will always be safe; it is impossible. 5725

Q. You say this boat was safe for 87 people. Do you think she would have been any safer for 40 than 86? A. Yes, and she would have been safer for one than for 40.

Q. She would have been a lot safer for 40 than for 86? A. She would have been some safer.

Q. If there had been 40 people in there there wouldn't have been 27 bodies found in her, would there? A. I do not know.

Q. You do not think so, do you? A. That is unnecessary. 5726

Q. Man to man, you do not think so, do you? A. I do not think there would be, no.

Mr. Jayne: That is all.

By Mr. Axtell:

Q. Has this boat got seats running across it? A. Yes, sir.

Q. Something like that? (Showing paper to witness.) A. Yes, sir. That is in the forward compartment; in the engine compartment we have seats on each side, and forward and at the after end they run across the boat. 5727

Mr. Axtell: Mark that for identification.

(The same was marked Claimants' Exhibit OOO for Identification of this date.)

Mr. Englar: That is all, Mr. Hale. Thank you. I do not think any of our other witnesses are going to take long.

(Witness excused.)

JAMES H. MATTHEWS, called as a witness on
5728 behalf of the petitioner, in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. Englar:

Q. Mr. Matthews, what is your business? A. I am the Vice-President of Spencer Kellogg & Sons, Inc.

Q. Where do you live? A. Buffalo, New York.

Q. And your office is there? A. Yes.

Q. Are you active in the management of the business? A. I am.

5729 Q. How many officers are there that take any active part in the running of the business? When I say that, I mean the running of the plants and that sort of thing, as distinguished from merely financial operations. A. Two.

Q. Who are they? A. Mr. Howard Kellogg and myself.

Q. Was that true as of December, 1926? A. It was.

Q. Did you know that there was a launch being operated to carry men back and forth across the North River between your Edgewater plant and New York? A. I did, yes.

5730 Q. That had been going on for a good many years? A. Yes.

Q. Now, did you see or were you told of any defective condition of that launch at any time, or were you told that she was being overloaded or operated under any dangerous conditions?

Mr. Axtell: I object to that. It is quite apparent that this is part of the case in rebuttal, and it does not rebut anything we have presented. I object to it most strenuously.

The Court: Why didn't you introduce this before? 5731

Mr. Englar: The reason I did not introduce it before, I understand the issue we had here was with respect to running in ice, and they have built up what I understand to be a foundation for an argument of consistent overloading and habitual overloading. That is what I understand to be their present contention, and that is why I asked these men to come down from Buffalo. It is purely a formal matter, and I did not consider it necessary as to ice. 5732

Mr. Axtell: That is ridiculous. He brings a lot of people in here presumably upon rebuttal but really to make up his main case. He has petitioned the Court for limitation of liability, and he has presented his main points, and now, after we have met those, he comes in here and presents his main case over again, and we certainly should have an opportunity to meet that.

Mr. Jayne: That question of overloading was one of the issues in this case that was filed in my answer. If you will read my answer on these death claims, you will find that it was my big contention, and I presumed they had read these answers to the petition and that they knew that we all set that up as an issue, that the boat was overloaded. 5733

The Court: Do you not both think in admiralty litigation we ought to have before us all the testimony available? The Circuit Court of Appeals even has the

5734 right to examine the case de novo and make an order directing additional testimony to be taken. It seems to me that this particular point is of such importance that very likely the Circuit Court of Appeals would think that I ought to receive it. Objection overruled.

Mr. Axtell: I think you will find the question of unseaworthiness comes under the pleadings definitely, and it may necessitate our calling other witnesses and prolonging this trial. I do not know what

5735 they are going to prove.

The Court: I hope not.

Mr. Englar: There has been no suggestion that any of the officers at Buffalo knew anything about the operation of this boat, and this proof I am putting in now is of a most formal character. I am not going to prove anything by them except they did not know anything was wrong. I do not see that it affects the main issues in the case.

Mr. Axtell: I call attention to paragraph 8 in the answer. (Reads paragraph

5736 8 of Claimants' answer in pleadings.) As far as the materiality of this evidence is concerned, I object on this ground: the evidence is uncontroverted so far that Mr. Stover, the evidence furnished by Mr. Stover and by others, that Mr. Stover was in entire charge; he had entire charge of that plant. This gentleman and the others at Buffalo had nothing to do with it. Mr. Aldrich volunteered he had been down here and inspected these life preservers and

knew how many there were, which brought some knowledge to them that they knew how many were on there. Now, why should we be concerned with immaterial facts that this concern in Buffalo or its principal officers knew nothing perhaps about certain things? It is not important whether they knew it or not, and I object to it on the ground that the evidence is immaterial and irrelevant to the issues of this case; incompetent under any circumstances. 5737

The Court: You may be right about it, but I think I had better receive it. Objection overruled. 5738

(The last question was repeated by the stenographer.)

A. No.

By Mr. Englar:

Q. Are you a man expert in the building or operation of boats? A. I am not.

Q. Had you ever seen this boat crowded? A. No.

Q. Who was there connected with your company that had to do with the operation of that boat, who had the direct responsibility for that? 5739

Mr. Axtell: I object to that as a conclusion.

Mr. Englar: Perhaps it is. I will withdraw the question.

Q. What officers or employees of your company did in fact have charge of the operating of that boat?

[illegible] Direct.

Mr. Antell: I object to the witness stating what he knows about this case, but he may state any of the facts or circumstances that you want him to make. Let the witness tell the facts if he knows what [illegible].

The Court: We will assume that he does.

Mr. Antell: I do not mean any characterization, but if he knows facts that are material facts let him state them.

Mr. Hagan: I do not want to ask a leading question. I will phrase it any way that will suit my adversary; I do not insist on any particular question.

Mr. Antell: Ask him what he did, what he directed to be done.

Q. Mr. Nicols was the manager of the Edgewater plant? A. Yes, sir.

Q. And was this boat under his jurisdiction, in connection with everything else at the plant? A. Yes.

Q. Was there anybody else connected with your Chicago office that did in fact inspect the boat, or take any responsibility with respect to it?

Mr. Antell: Objected to as incompetent, immaterial and irrelevant, leading——

The Court: Overruled.

A. Yes.

Q. Who? A. Aldrich.

Q. Did he make these periodical tours of inspection of the different plants? A. Yes.

Q. And inspect the boat in common with the other property? A. Yes, sir.

H. Kellogg—for Petitioner—Rebuttal—Direct.

Q. Did he ever report to you the boat was unsafe or overloaded, or anything objectionable in the way she was run? A. Never.

Mr. Englar: That is all.

Cross examination by Mr. Jayne:

Q. You delegated full responsibility with respect to all the property of the company at Edgewater to Mr. Stover? A. The operation of it, yes.

Q. The operation and control of all the property there was vested in him, and the responsibility for it was vested in him? A. As far as the operation was concerned, yes.

Q. That included the launch? A. Yes.

Mr. Jayne: That is all.

Mr. Englar: That is all.

(Witness excused.)

Howard Kellogg, called as a witness on behalf of the petitioner, in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. Englar:

Q. Mr. Kellogg, you are the President of Spencer Kellogg & Sons? A. I am.

Q. Did you hold that position in December, 1926? A. Yes.

Q. Did you have anything to do personally with the operation of the launch "Linseed King"? A. No.

5746 Q. You knew that she was being operated here in New York? A. Yes.

Q. You had seen her? A. Yes.

Q. Did you ever see her when she was crowded? A. No.

Q. Had you ridden on her? A. Yes.

Q. Are you an expert in building or operating boats? A. I am not, no.

Q. Did anything ever come to your attention, or was anything reported to you to the effect that the boat was overloaded or unseaworthy? A. Never.

5747 Q. Mr. Stover was in charge of the Edgewater plant, as I understand? A. He was.

Q. And excepting in so far as he received specific orders from the officials at Buffalo, he had the responsibility for the operation of the plant? A. Yes, he had.

Q. You also had Mr. Aldrich to make these trips to the different plants? A. Yes.

Q. And was he a part of your home office force? A. Yes, he was.

Q. And he visited these different plants periodically? A. Yes.

Q. And just what was the general purpose of
5748 his inspections? A. Well, he was in charge of welfare and safety work, and he went around to all of our plants and checked up on safety appliances and working conditions, and so forth.

Q. Did he make reports to you from time to time? A. Yes.

Q. As to conditions in the different plants? A. Yes, he did.

Q. Did he make recommendations for safety? A. Yes.

Q. Did he ever make— A. Those reports came to Mr. Matthews.

Q. They came to Mr. Matthews? A. Yes. 5749

Q. Did any report ever come to you about this——

Mr. Englar: I think he has already testified about that. That is all.

Cross examination by Mr. Axtell:

Q. Did you ever ride on any boat? A. Oh, yes.

Q. Ride on the "Linseed King"? A. Yes.

Q. When she had that cabin on her? A. Yes.

Q. Did you notice that the windows opened 5750
in in that cabin? A. No, I did not.

Q. How many were riding on her when you were there, Mr. Kellogg? A. Well, of course, I have been on her several times.

Q. You have been on her when she was crowded? A. No, I never have.

Q. Did you ever ride on this boat? (Showing witness picture.) A. Yes, I have; that is the "Elgrudor," isn't it?

Q. How long was she? A. I would say she was 128 feet, about, but it is a long time——

5751

Mr. Englar: Just a moment, I object to that. The witness is not an expert on boats.

The Witness: My father owned that boat, I think that is the one.

Mr. Englar: And I object to his being asked about other boats that he rode on.

The Court: Objection sustained.

Q. Did you ever consider how many people could safely ride on the "Linseed King"? A. No.

5752 Q. Did you leave that entirely to Mr. Stover? A. Yes, through Mr. Matthews.

Q. You never saw any crowded conditions in the "Elgrude," your father's yacht?

Mr. Englar: I object to that.

The Court: Sustain the objection. I do not quite see what that vessel has to do with this case.

Cross examination by Mr. Jayne:

Q. Did you ever ride on the subway when it
5753 was crowded? A. Yes, I have.

Q. In the rush hour in New York? A. Yes.

Q. Would you consider if you had 88 men in 113 square feet it would be just as crowded?

Mr. Englar: Just a moment. I object to that. I have not called this witness as an expert.

The Court: What was the question?

(The question was repeated by the stenographer.)

The Court: Sustained.

5754 Mr. Jayne: They are calling him here on the question of privity of knowledge, and he said he has ridden on the boat.

The Court: He has not been interrogated except about his privity of knowledge.

Mr. Jayne: That is what I am talking about, whether he did have any privity of knowledge whether this boat was crowded.

The Court: You say whether the boat was crowded? 5755

Mr. Jayne: Yes.

The Court: I thought you were talking about the subway?

Mr. Jayne: I was, just to get his experience in crowds on the question whether this boat was crowded.

The Court: You mean pertaining to his coming over on the boat, his experience that way?

Mr. Jayne: Yes, your Honor; he said he had ridden on the boat. 5756

The Court: What was the question again?

(The question was again repeated by the stenographer.)

The Court: I think that question is objectionable.

Q. Leaving the subway out of it, I ask you the question, do you think if you had 88 men in 113 square feet of floor space that it would be too crowded? A. I do not know that, really.

Q. The extent of your participation in the activities of this company was attending directors' meetings at this time? A. No. 5757

Q. Are you Mr. Howard Kellogg? A. Yes.

Q. You are actively engaged in the work of the company, are you? A. Yes, I am.

Q. From day to day? A. Yes, sir.

The Court: Well, anything further?

By Mr. Axtell:

Q. Was this company formed by your father, Spencer Kellogg? A. Yes, it was, years ago.

5758 Q. It is not 107 years old, then? A. No, not this company.

Mr. Axtell: That is all.

Mr. Englar: That is all. I do not think we have anything more that is lengthy. I just have a few odds and ends to take up. Mr. Axtell, you will remember there was a photograph you had of the "Linseed King" with a lot of people standing up in the windows. Could you let me have a copy of that? I would like to offer it in evidence. The boat was lying

5759 on the side.

Mr. Axtell: I do not believe I remember any such picture.

Mr. Englar: You had such a picture, I think.

Mr. Axtell: I do not know about any such picture.

Mr. Englar: Mr. Aldrich, I have Mr. Aldrich here, and I think we had better clear up any of these questions of records.

Mr. Axtell: Is this it?

5760 Mr. Englar: No, that isn't the one.

Mr. Axtell: Let us offer this one anyhow. They are out of the windows a little, and this shows how men get through those windows.

Mr. Englar: No objection.

The Court: Received.

(The same was received in evidence and marked Claimants' Exhibit PPP of this date.)

The Court: Is this a picture of the cabin of the "Linseed King"? 5761

Mr. Englar: Yes. That is not the picture I referred to, but it is slightly similar.

I now offer in evidence Exhibit 25 for Identification, which may now go in evidence.

Mr. Axtell: No objection.

The Court: Received.

(Paper previously marked Petitioner's Exhibit 25 for Identification was received in evidence and marked Petitioner's Exhibit 25 of this date.) 5762

Mr. Axtell: Was that a list of Mr. Nelson's?

Mr. Englar: Yes, except I do not think there is anything to show what that is. I will ask Mr. Aldrich what that is.

HARRY J. ALDRICH, recalled on behalf of the petitioner, in rebuttal, testified as follows: 5763

Direct examination by Mr. Englar:

Q. Mr. Aldrich, this Exhibit 25 is a list of the days on which there was a seed ship at your plant with a list of the number of men that worked it? A. It is.

Q. On the different watches? A. Yes, sir.

Q. From August 10th until the 22nd of December? A. Right.

5764 Cross examination by Mr. Axtell:

Q. Those are regular employees? A. Yes—no, I wouldn't say regular; no, those are the men that were used on the ships.

Q. Those are the ship men?

Mr. Englar: Yes.

Q. You have prepared a list of the men who were told on Saturday to come back Sunday in the morning? A. Yes, sir.

Q. You have got that from certain checks
5765 which you had here in an envelope? A. Those which you have there?

Q. Yes. A. Yes.

Q. That is, Mr. Nelson had a check that he tore in two and gave the man half of it, and he kept the other half? A. It was a stub of the time card.

Q. That is a correct copy of the men whose names appear on that list? A. On those checks, yes, sir.

Q. And they are 43 in number? A. I think 44; maybe 43.

5766 Mr. Axtell: I offer that in evidence.

(The same was received in evidence and marked Claimant's Exhibit QQQ of this date.)

Q. You have made those comparisons yourself and you know the names are correctly copied from the original checks? A. Yes, sir.

Re-direct examination by Mr. Englar: 5767

Q. Mr. Aldrich, did you at my request look over your payrolls to see during what weeks and for how many days Capt. Rohweder was ever absent? A. I did.

Q. After he came with you? A. I did.

Q. Will you just state in the record what you found? A. For the week ending December 11, 1926, Capt. Rohweder lost four days' time. For the week ending November 27, 1926, he lost one day. For the week ending November 13, 1926, he lost two days. 5768

Q. Those are all the absences you found after he came with you? A. Yes, sir, that is all.

Mr. Englar: Is there anything else?

Mr. Axtell: I want the payroll for the week following.

Mr. Englar: You want the payroll for the week following the accident?

Mr. Axtell: Yes.

Q. Mr. Aldrich, had you ever ridden on this boat, the "Linseed King," when she was making her first morning trip? A. I have. 5769

Q. Did you ever do that when there was a seed ship in? A. I have.

Q. Was that in the course of your duties as you have described them to us? A. It was.

Q. Did you ever ride on the boat when she was uncomfortably crowded? A. I have not.

Q. Were you familiar with the practice of making extra trips when they had seed ships in? A. I was.

Q. Did anyone ever tell you, or did you ever

5770 see anything to indicate that the "Linseed King" was being overloaded? A. I did not.

Mr. Englar: That is all.

Re-cross examination by Mr. Axtell:

Q. Does this photoprint look like a copy of something that you have seen before? Is this one of your time cards? A. It has the appearance of being a copy of one of our time cards.

Q. Did you use that to ascertain whether Mr. Rohweder was on duty on those days? A. On

5771 this?

Q. Did you use a card similar to that to find whether he was there or not? A. No, I took that from our listings; the actual time cards have been destroyed, they are not preserved. We make a list.

Q. Would that time card, if that is a correct photoprint, copy, seem to indicate that Mr. Rohweder was there on duty on July 7, 1927?

Mr. Englar: July 7th?
The Witness: July 9th.

5772 Q. Or July 9th, which is it, 7th or 9th? A. 9th.

Q. Would that indicate he was on duty at that time at the plant? A. It indicates here he rung out on those two days.

Q. Don't you know as a matter of fact he was up in the Adirondack Mountains on that date? A. It might be that somebody else rung the card.

Q. How can you be certain somebody did not ring it in September and October and November,

and so forth? A. I have no means of knowing that. 5773

Mr. Axtell: That is all.

By Mr. Jayne:

Q. When did you last ride on the boat? A. I rode on the boat the week of November 6th.

Q. What year? A. 1926.

Q. How many times? A. Why, in that time I presume I rode on her six or eight times.

Q. On that day? A. No; during that week.

Q. How many times during that day? A. On November 6th? 5774

Q. Yes. A. I probably rode her twice that day.

Q. Once over and once back? A. Yes.

Q. You call that twice, you mean once across and back, one round trip, is that it? A. Yes.

Q. What time of the day was that? A. I could not tell you now, I do not keep a record of all the times that I ride on the boat.

Q. What part of the day was it? A. On that particular day?

Q. Yes. A. I cannot tell you.

Q. You do not know whether it was in the middle of the day, in the morning or the afternoon? A. It was probably one trip in the morning and probably one in the afternoon. 5775

Q. I thought you said you made one trip that day? A. I did not say that at all. You are putting words into my mouth.

Q. I see, pardon me. I am terribly sorry. Did you say on November 6th you made one trip over and one trip back? A. Yes.

Q. And that was all the trips that you made

5776 that day? A. All that I remember; I do not keep a record of it.

Q. That is a round trip you made that day. Now, I ask you if you have any idea what time of day you made it? A. I made probably one of the morning trips, and it would be probably between 4 and 5 in the afternoon that I made the other.

Q. You mean to say you went over in the morning and came back in the afternoon? A. Absolutely.

Q. There wasn't any seed boat in at that time,
5777 was there? A. Let me see the list, the seed boat list, and I will tell you. (Counsel hands paper to witness.) No boat was in that week; it was the week before.

Q. It is my recollection that you did testify that you counted the life preservers and told the captain not to carry more than the number of life preservers? A. I said I counted the life preservers, yes.

Q. Did you tell him not to carry any more than the number of life preservers? A. I will not say I told Capt. Rohweder that, no.

Q. You thought it was perfectly safe to carry
5778 up to the number of life preservers? A. That is the assumption, yes.

Mr. Jayne: That is all.

Re-direct examination by Mr. Englar:

Q. Your testimony about when Capt. Rohweder was absent was taken from your regular office records, was it? A. Yes, sir.

The Court: He has already told you that.

Q. When you counted these life preservers did you report to Mr. Stover how many there were? A. I do not know that I did, no. 5779

Q. You do not recall? A. No.

Mr. Englar: That is all.

Mr. Axtell: That is all.

The Court: Are you resting now?

Mr. Englar: No, your Honor. I have one more witness, perhaps two, on very brief matters. We are just sort of cleaning up little points that have cropped up.

5780

CHARLES E. STOVER, recalled on behalf of the petitioner, in rebuttal, testified as follows:

Direct examination by Mr. Englar:

Q. Mr. Stover, did you at any time give notice to any of your employees that you would not be bound by the New Jersey Compensation Law? A. No, sir.

Q. Did any of the employees ever give you any such notice? A. No, sir. 5781

Mr. Axtell: I object to that as incompetent, immaterial and irrelevant.

Mr. Englar: The Jersey law is an elective law, so that I think this is material.

Mr. Axtell: I object to that. I should have objected to the first question if I had realized the purport of the answer.

The Court: I have already received some evidence that permits the other side to raise the point. I do not think it makes any difference. I do not think the ques-

5782 tion of liability depends upon any compensation act of any State, but I received the testimony the other day, and that enables you to raise the point.

Mr. Axtell: Just note my objection, that is all.

The Court: It is received tentatively, and a ruling will be made later on.

Mr. Englar: Of course, if your Honor finds it is immaterial, it does not matter about having it in, but I would like to have the foundation there.

5783 The Court: You will have it on the record to help you on any point which you may desire it.

Q. Mr. Stover, you had ridden on the "Linseed King" at times yourself? A. Yes, sir.

Q. Did you ever ride on her or see her when she seemed to be uncomfortably crowded?

Mr. Jayne: I object to that as calling for a conclusion from this witness. It is on one of the pertinent points of the case. We have examined him very thoroughly on.

5784 just how many he counted coming off her and how many he allowed on her, and when he asks this question it is only a conclusion and is on a matter thoroughly covered before.

Mr. Englar: If your Honor please, I went over this witness's testimony carefully within the last day or two, to confirm my recollection. He was asked on cross-examination a lot about that, but I did not go into that point at all. This is simply rebuttal.

Mr. Jayne: Assume that is so, after the cross-examination you had a re-direct or re-cross of your own witness at that time. This is not rebuttal as to any testimony that was produced by the claimants, it is only as to testimony brought out in your case. 5785

The Court: If that was thoroughly covered on cross-examination, what is the use of going into it again as part of the affirmative? You have a right to take advantage of whatever testimony was brought out on cross-examination, even though you failed to allude to it. 5786

Mr. Englar: But he was examined only from their standpoint, not from my standpoint. I did not consider that was an issue in my case.

The Court: You regard it as important?

Mr. Englar: I think it may be, yes.

(The question was repeated by the stenographer.)

Mr. Jayne: I object on the ground that he is asking for a conclusion from this witness on a material part of the case; instead of asking for the facts only he is asking for the conclusion that can be derived by this witness. 5787

The Court: I think the form of the question is objectionable.

Mr. Englar: I will put it this way:

Q. Did you ever see the boat or ride on the boat at a time when the people inside of the cabin did not have room to move about comfortably?

5788 Mr. Jayne: I object to it for the same reason. I make the same objection; the witness has been asked how many he saw on the boat and how much space. He can ask him that.

The Court: I suggest that you comply with the suggestion of counsel.

Mr. Englar: Of course, I have been trying to make as simple a question as I can.

The Court: I am perfectly willing you should make it simple, but the other side isn't; therefore you must conform more
5789 strictly to the rules of evidence. Perhaps you had better ask him what his observations were.

Mr. Englar: What I am trying to prove by the witness is on the question of privity. He never saw her overcrowded, and that is the issue on which I am examining him, and it seems to me that what knowledge came to him is the issue here.

Mr. Jayne: What facts he saw, what did he see, not what his mind concluded as to what he saw.

5790 The Court: I am in doubt about it, but I will rule with you.

Mr. Jayne: Thank you.

Q. Mr. Stover, is it a fact that when you had seed ships in it was the practice to make an extra trip with this boat? A. Yes, sir.

Q. In the early morning? A. Yes, sir.

Q. If that is so, why was it that you gave special instructions to Mr. McHale on Sunday to have an extra trip made? A. Because——

Mr. Axtell: That assumes something not proven. 5791

Mr. Englar: Oh, yes, that is proven.

Mr. Axtell: He told Mr. McHale?

Mr. Englar: Yes.

Mr. Axtell: I object to it as hearsay and as incompetent.

The Court: Overruled.

A. Because Capt. Rohweder was a comparatively new man, and I wanted to be sure that the custom was carried out.

Q. In view of the manner in which your business was conducted, and the number of men traveling between your plant and the New York shore, was there any occasion at any time where this boat was required, or where there was any necessity for her to carry more than 65 to 70 people? 5792
A. No, sir. We could double up the trips any time that we had over 60 men.

Q. There is one place in your testimony——

The Court: Before you leave that subject, I ruled out your initial question of this witness that it was a conclusion, as I thought that was the ground of the objection. It did not mean to rule you should not interrogate him with relation to what his observations were on these various trips he had made on that ship. 5793

Mr. Englar: He did not count the men.

Mr. Jayne: He has testified he counted 75.

Mr. Englar: No, he did not testify to that.

Mr. Axtell: We have got his evidence, you have not read it, that is all.

5794 Mr. Englar: Well, I have read it all.

Mr. Axtell: Pages 630 and 631: "Q. Tell us just how many she carried."

Mr. Englar: Well, I will ask him about that.

Mr. Jayne: I object to asking him about what he has already testified about here. Are you going to ask him if he so testified?

Mr. Englar: No.

Q. Mr. Stover, you testified——

5795 Mr. Axtell: I object to his informing the witness what he testified to. This is direct examination, and you should not be permitted to impeach your own witness, nor should he be permitted to lead him.

Mr. Englar: What I would like to do, there are two places that do not seem quite consistent, and I would like to have him explain them.

Mr. Axtell: I object to his stating that in front of the witness.

Mr. Englar: I would like to put them both in front of him and have him explain

5796 the inconsistency. I think that is fair enough.

The Court: I think that is all right.

Mr. Axtell: Where is the other statement?

Mr. Englar: I have a note of the page here.

The Court: Witnesses have a right during any stage of the trial to correct their testimony with explanations.

Q. You said, Mr. Stover, at pages 630 and 631 5797
that when you saw as much as 75 men on the boat you told the captain that was a pretty good load and to be careful, and then at another place——

Mr. Axtell: I object to that most eloquently. He is giving his conclusion of what he thinks this evidence means.

Mr. Englar: I will read exactly what is in the record, if you wish.

The Court: Overruled.

Q. Then in another place, Mr. Stover, you said, 5798
that is page 631, you were being examined by Mr. Jayne, I think, and you said: "And even if the captain brought over 82 men instead of 75 men, he would have done so with your full approval and authority because you had given that many life preservers to the boat, recognizing the carriage of that many passengers, is that right? A. Yes, sir." My question is whether you can reconcile those two statements?

Mr. Jayne: I submit there is nothing inconsistent between them, and therefore it 5799
is immaterial and irrelevant.

The Court: What is that?

Mr. Jayne: There is nothing inconsistent with those two statements.

The Court: Overruled. Let us have it.

A. The reason I put it that way, from the form of his question I thought that he meant I had limited it to 82 men, which was not the specific instructions which I had given. However, 82 men is the way the question was read. I did not

5800 expect him to carry that many. I also told him not to operate the boat under unsafe conditions. I figured he was a competent man and he would know what an unsafe condition was. Also, when we had 75 men, I remarked from my own observation that was a pretty good load.

Q. Now, did you ever see more than 75 being carried? A. That is the most I ever saw.

Q. Did you ever authorize or approve a larger number being carried? A. No, sir, I did not approve of that many.

Q. Why was that? Did you consider it dan-
5801 gerous to life or what? A. No, because——

Mr. Axtell: I object to that, just correcting something that he admitted in this case.

The Court: I think I will sustain the objection.

Mr. Axtell: I move to strike out the answer.

The Court: Yes.

Mr. Englar: May I inquire on what ground your Honor rules it out?

The Court: I think it is irrelevant and
5802 incompetent; that is the ground of the objection, is it not?

Mr. Jayne: Yes, I think at this time this witness testified to all these things, and now they want to come in here and deny these things by having him say he misunderstood, or something, and give an entirely different set-up of facts. Are we going to try this case over again and have new issues?

Mr. Englar: This witness testified about

two and a half hours, and there is one 5803
place in his testimony that seemed to me to require explanation.

Mr. Axtell: Do you want to impeach him?

The Court: He has given the explanation. I will allow that to stand.

Mr. Englar: Yes, sir, my last question was—what was it?

(The last question was repeated by the stenographer.)

The Court: You are asking for a mental operation.

5804

Mr. Englar: I think the mental operation of this witness may have some legal relevancy because we are dealing with the question of privity, and here is a witness who is not an expert, and I think it is fair to ask him whether in a given state of facts he thought there was danger.

The Court: I will adhere to the ruling.

Q. Did you ever see a number of men carried on this boat which you considered was dangerous? A. No, sir.

Q. Was there any reason in the nature of your 5805
business or the methods of operation which led you to caution the captain that 75 was a pretty good load?

Mr. Jayne: I object to that.

The Court: Overruled.

A. That is because there was no object in bringing more men than would be comfortable in the boat, because he could double up on the trips, which we did often.

5806 Q. Was the operation of this boat a convenience for the men coming to the plant? A. Yes, sir.

Q. Was there any other reason——

Mr. Jayne: That has been testified to time and again, that is just going over and over the same thing.

Mr. Englar: I am bringing out certain facts which may have a bearing on the Workmen's Compensation aspect of the case.

The Court: Under the rulings I have
5807 already made pertaining to that particular subject, I will let it in.

Q. Was there any other convenient method of getting from New York to your plant, Mr. Stover? A. No, sir.

Q. On the first scheduled trip, which I understand was 6:30 in the morning from New Jersey, did the boat ordinarily carry any men? A. No, sir.

Q. Was there any shifting of men at that time? A. No, sir; the night shift went off at 7 o'clock. I stated in one of my answers to Mr. Jayne they
5808 probably would have gone on that morning trip, but that was an error; they would have gone home at 7 o'clock.

Q. The shift was at 7 o'clock? A. Yes, sir.

Mr. Englar: I am just winding up my case. I am going a little slow because I have a lot of little disconnected notes that I want to cover, but I shall not be long.

Q. Under what circumstances did Fred Lang leave your employ? A. He was laid off.

Q. Discharged? A. Yes. 5809

Q. By you? A. Yes.

Q. Did Arthur Klahre run this boat at any time in 1926? A. He ran it only one or two days; I could not say which. I came over with him, I remember, in the boat, and he ran the boat so poorly I told Mr. Balz to take him off the boat immediately.

Q. I think you said most of the time Mr. Rohweder did not have an extra man with him; what was the situation on most of the trips that he made? A. On most of the trips he did not need one. He preferred Roberts on the morning trip. 5810

Q. When you had these extra men for work on the dock did they all come on the first morning trip, or did you get them on the later trips? A. We would get them all during the morning; even had a special trip at 10:30 to get men.

Q. During the fall of 1926 had you ever had a surplus of men? A. No; we had trouble getting enough.

Q. Now, when Mr. Balz came with you first, was he put in charge of the "Linseed King" immediately? A. No, sir.

Q. Was it later on? A. Later on, yes, sir, after I had found out what experience he had had, 5811 then I included the motorboat in his department.

Q. Did you ever know of a steam siphon being down along the pier, being kept there to pump out this boat? A. No, sir.

Q. Or a steam pump? A. No, sir, never.

Q. Did you get any other reports about the life preservers except from Capt. Rohweder? A. Yes, I got one from Mr. McHale and one from Mr. Balz.

Q. What did they report? A. Mr. Balz reported 80, including rings; Mr. McHale reported

5812 82 including the rings, and Capt. Rohweder's report was 86 including the rings.

Mr. Englar: That is all. I have one other witness I want to recall for just two or three questions, your Honor.

Cross examination by Mr. Axtell:

Q. This is correct, the advertisement that was placed on the 20th, for the 6:30 boat? A. On Monday, 6:30, 7:30, 8:15 and 10 A. M., for day shifts; 3:30 and 5:15 for night shift.

5813 Q. You say Capt. Rohweder had not been in the company's employ so long, and therefore you were a little bit careful about what you told him to do? A. I was more particular about passing on instructions to him than to Capt. Dingle, because Capt. Dingle had been there so long he knew all the customs.

Q. You told him to meet this boat Monday morning, to have his boat there Monday morning? A. I told him through Mr. McHale to make a trip at 6 o'clock, and then to make his regular trip at 6:30.

5814 Q. Well, I suppose there have been times in the past when the boat would be delayed a little bit in getting started, or something? A. Oh, yes.

Q. She had a gasoline engine in her, and I suppose like a good many automobiles, sometimes it won't start? A. Sometimes.

Q. Gasoline engines sometimes don't start, especially in cold weather? A. Yes.

Q. That is why you had the radiator put in this boat, wasn't it? A. Yes, sir.

Q. And you knew that the boat might be delayed on her first trip more than on her later trips? A. The boat was very seldom delayed.

Q. And of course the man might be late getting 5815
there sometimes? A. Well, that does not very often happen.

Q. The boat you concluded was too small for the job, didn't you? A. No, sir.

Q. Why did you build your next boat twice as big or more?

Mr. Englar: Objected to, anything about the new boat.

The Court: Sustained.

Q. How about the 44 men on this list here 5816
marked Exhibit QQQ, those men that were engaged for Monday morning, you figured they would have to be carried over? A. I think they had shrunk some by Sunday, but they were told to come over by 6 o'clock.

Q. They were to be there at 6 o'clock? A. Yes.

Q. These extra men? A. Yes.

Q. And then you had your regulars? A. They wouldn't be there until later.

Q. You had your regulars, didn't you, 120 of those, 126 leaving New York? A. No, not to come on that trip.

Q. Where is that list? 5817

Mr. Englar: He says not on that trip.

Q. Here it is. How many of them were on the morning shift? A. Oh, I should say about 40.

Q. 8-hour shifts, about 40 altogether? A. Yes.

Q. And there are 40 of these? A. Yes.

Q. Well, then, it is possible of course there might be a few extra ones who were looking for a job that morning? A. Yes, sir.

5818 Q. You did not have any record of them? They would be trying to come over there and hire out? A. Yes.

Q. So you had reason to expect at least 80 for the first boat? A. 80 for the two trips, yes.

Q. And you had reason to expect about 200 for the first few hours there, didn't you? A. No.

Q. You had these 40 that you had engaged, told to come back, and then you had the 30 on the first shift, and the odd stray extra ones that might happen to be there? A. Yes.

Q. You had no means of controlling that over at your home in Laurel? A. No.

5819 Q. You did not send any extra man over with him that morning? A. I gave instructions for an extra man.

Q. I say, you did not send an extra man with him? A. I gave instructions to send an extra man with him.

Q. You do not want to answer my question, is that it? A. I was not there to do it.

Mr. Axtell: That is all.

The Court: Anything further?

Mr. Englar: Not for this witness, your Honor.

5820 (Witness excused.)

JOSEPH A. MCHALE, recalled on behalf of the petitioner, testified as follows:

Direct examination by Mr. Englar:

Q. Mr. McHale, did you have any conversation with the witness D'Arco here in the building? A. No, sir.

Q. At any time? A. No, sir. 5821

Q. Did you anywhere or at any time threaten him with discharge if he testified in this case? A. No, sir.

Q. On this first morning trip to New York did the boat ordinarily carry any men? A. No, sir.

Q. When did your shift change? A. 7 o'clock.

Q. 7 o'clock? A. Yes, sir.

Mr. Englar: That is all.

(Mr. Barrett was to figure out a couple of things and give us the results.)

(Witness excused.)

5822

HARVEY BARRETT, recalled on behalf of the petitioner, testified as follows:

Re-direct examination by Mr. Englar: (Continued.)

Q. Just let us have the results of those calculations. A. One of the questions was what was the floor area in the pilothouse, and I figured that out while Mr. Jayne was re-cross examining me as 21.1 square feet. The other question was if the men in the boat shifted over to one side due to the rolling of the boat, or to some other cause, how far would the boat list? I have figured that out, and it would roll about 16 degrees. 5823

Q. You are figuring with how many men in there? A. That is with 81 men.

Q. Is that the maximum amount that the men could cause her to roll by moving themselves in the boat? A. Yes, sir.

5824 Mr. Englar: I do not recall anything else he was asked to figure, unless somebody else does. That is all, Mr. Barrett.

Now I would like a stipulation on the record for the benefit of both sides, in all cases where the records of the District Attorney or the Magistrate's Court have been read in the examination of witnesses, that it is agreed that those were correct readings, subject to comparison; if either side thinks a mistake has been made, we can refer to the originals.

5825 The Court: That I assume is the arrangement.

Mr. Axtell: That is all right.

Mr. Englar: I should like to offer in evidence a photostatic copy of the logbook of the "Manisees".

(The same was received in evidence and marked Petitioner's Exhibit 27 of this date.)

Mr. Axtell: We want the police records. I suppose you have checked over those and are satisfied?

5826 Mr. Englar: Yes, Mr. Matteson can tell you about that. Most of them I think are quite all right. I also want to offer a weather report for September 22nd, the day the chair was picked up by the captain of the boat.

Mr. Axtell: No objection.

The Court: Received.

(The same was received in evidence and marked Petitioner's Exhibit 28 of this date.)

Mr. Axtell: Will you permit this to go in? It is something to corroborate the Castro loss. It is a telegram to the United States Bureau of Insurance or Claims, or something; it is official. 5827

Mr. Englar: I really do not think I can let that go in as evidence of anything; it doesn't seem to me to be such as would be admissible.

Mr. Axtell: William Castro's body was not found, but we have filed his claim, and there has been testimony that he was on the boat. This proves that the United States Signal Corps of the United States Army have confirmed the payment of a pension allowance, or something of that sort, some kind of insurance. Of course, it is not strictly—— 5828

The Court: What is the purpose?

Mr. Axtell: Corroborative proof of the loss of that man's life on the boat, in connection with other evidence.

The Court: You object to it?

Mr. Englar: I do, your Honor. I do not like to be technical, but I do think that is a little too remote. 5829

The Court: I think I must sustain the objection, but that does not bar you from bringing in proper evidence later on.

Mr. Axtell: No. This is on the question of how many were on the boat. Mark it for identification.

(The same was marked Claimants' Exhibit RRR for Identification of this date.)

5830 Mr. Englar: I take it your Honor will take judicial notice of things in the Almanac and Tide Tables, and things of that kind?

The Court: I will if you call my attention to it, but I am not going to search for them.

Mr. Englar: I have here a photograph from a page of the World Almanac for December——

Mr. Axtell: We put an excerpt of that in the record. I have no objection.

5831 Mr. Englar: You put some of it in. I would just like to have the complete page in.

The Court: Mark it.

(The same was received in evidence and marked Petitioner's Exhibit 29 of this date.)

Mr. Englar: Now, about the police cards, Mr. Matteson has gone over them and he will make a statement.

5832 Mr. Matteson: In Exhibit TT, where it was offered in the record, it was stated to contain 30 cards. As a matter of fact, it contains 27. If the record is corrected in that respect, we have no objection.

Mr. Axtell: Wasn't it 30?

Mr. Matteson: : I think your others are included in another exhibit.

Mr. Axtell: Go ahead and finish your statement.

The Court: There is no objection to the cards going in?

Mr. Axtell: : No, let them go in. 5833

Mr. Matteson: Except the record should show there is 27 of them.

The Court: What are these cards?

Mr. Matteson: : These are the police records of bodies taken out of the "Linseed King". The testimony and the cards establish there were 27.

Mr. Axtell: That is what we have always contended.

(The cards previously marked Claimants' Exhibit TT for Identification were now received in evidence and marked Claimants' Exhibit TT of this date.) 5834

Mr. Matteson: With reference to Exhibit UU, consisting of 28 cards, we object to only one, that is, No. 3754, Philip Norgrove, which is a duplication of 3759, Kenneth Norgrove. There was only one man, so Philip Norgrove is a duplication, and we object to that.

Mr. Englar: It is the same address, I understand.

Mr. Axtell: We will accept that correction. 5835

The Court: Received.

(The cards previously marked Claimants' Exhibit UU for Identification were now received in evidence and marked Claimants' Exhibit UU of this date.)

Mr. Axtell: The only difference is there is a difference of age, 35 and 27. They gave

5836 the same address, but one gave 35 years of age and the other 27.

Mr. Englar: Our people investigated, and they say there is only one.

Mr. Axtell: Let them go in anyway. That is merely a comment upon it. Now, does that complete your case?

Mr. Englar: Yes, we rest.

Mr. Axtell: The week, the next week's payroll, you will give us, and that may be marked when you produce it?

Mr. Englar: That was left at the office.

5837 Mr. Axtell: Now I want to have marked for identification this photograph in connection with the copy of the advertisement that produced it, and to state that the man who says he took the photograph, Mr. H. G. Hatfield, has been sent for by a process server, but I do not know what time he will get here. I do not want to delay your Honor. If we understand his testimony is material or relevant to the issues of this case we can notify the other side and take his deposition?

Mr. Englar: I have no objection.

5838 Mr. Axtell: It may not be worth while going into, but as long as I have got the communication——

The Court: I will be here tomorrow morning. You could have him here tomorrow morning.

Mr. Axtell: Well, you will be here tomorrow?

The Court: Tomorrow morning. What about summing up? What about submitting what you have to submit?

Mr. Axtell: I will be guided by whatever 5839
your Honor would like. If you would like any argument, you think that it would be helpful in the decision of this case, I shall be glad to make an argument. It seems to me the evidence is so overwhelming against the petition that perhaps it will not be necessary.

Mr. Englar: It is such a heavy record that I would rather prepare a brief and then argue it when I have done that.

The Court: I would prefer you to argue the case. We have been trying this case 5840
now for the better part of three weeks. I think everybody will admit that it was an accident of the most harrowing kind, and it will require most careful consideration on the part of the proctors as well as by the Court, and I will appreciate all the assistance that counsel can give me. I do not think these points are quite as clear as you intimate. I want to hear you, and I would like to have you arrange for a hearing, not only for summing up of the evidence, because that will be helpful, I cannot bear in mind everything that 5841
has been adduced, but you can both help me on the legal points involved. I would like to hear you lengthily and have you file briefs as well.

Mr. Axtell: If your Honor is going to be here tomorrow, would that be satisfactory for the oral arguments? I am going to be in other trials thereafter, and while the facts are fresh in my mind, I think

5842 it would be better to argue it now than later.

Mr. Englar: I do not think summing up tomorrow would be very feasible, your Honor, because I should want to go through and tabulate this record; there is such a mass of evidence. I would be perfectly willing to come to Buffalo in a week or ten days, if Mr. Axtell could do that, and sum up there.

Mr. Jayne: You can still tabulate your brief after the oral argument.

5843 The Court: Suppose I hear you orally tomorrow and give you time to file your briefs?

Mr. Axtell: That would be the best way, I think.

Mr. Englar: Whatever your Honor's preference is.

Mr. Axtell: We will get a brief in in ten days, and argue this when it is all fresh in our minds. The longer it is delayed by any of us, the harder it is going to be to give careful attention to all the facts.

5844 The Court: Your summing up will probably narrow the issue. I will hear you tomorrow morning at half past ten, and we will have the evidence closed here before we adjourn.

Mr. Axtell: I ask that these photographs be marked.

(The same were received in evidence and marked Claimants' Exhibit SSS of this date.)

Mr. Axtell: There is one other item that

I forgot to have marked, that is this other 5845
Police Blotter. I want to give you a copy.

(The same was received in evidence and marked Claimants' Exhibit TTT of this date.)

Mr. Axtell: You will want about an hour for each side?

The Court: Is that about what you want, an hour to each side?

Mr. Englar: I think we can make practically any sort of an argument your Honor prefers. We can take this case and argue 5846
all day, or we can argue for an hour.

The Court: I would like to know what are the salient points in the case, and you can make a usual summation of the evidence, but it should be kept within an hour on each side.

Mr. Englar: I am perfectly willing, just so long as I know what the arrangement is. I would be glad to have the time fixed so we know what sort of an argument it is to be.

Mr. Axtell: Your Honor will take judi- 5847
cial notice that 71 claims have been filed in this case before the United States Commissioner? He reports 71 as having been on the boat and filed claims, 50 death cases, and the rest of them personal injuries, and there were a number of personal survivors on the boat who did not file any claims.

The Court: What is the idea of that if the liability is not limited? You are going on with the case before the Commissioner?

5848 Mr. Axtell: We would have then the election of proceeding in the State courts, or if we wish, we could let them go to the Commissioner and let him decide that matter.

The Court: That you have not decided?

Mr. Axtell: That we have not decided yet.

The Court: You may take it before the Commissioner and you may not?

Mr. Axtell: I presume it will be before the Commissioner; it would be a terrible strain on everybody to try all these cases 5849 separately.

The Court: Is everything submitted that you wish to submit?

Mr. Englar: This last exhibit that has been referred to, I have no doubt we will agree to it, it is another Police document, but we would like to keep it over night. But I have no reason to think it won't be as acceptable as the others.

The Court: We will adjourn until tomorrow morning at half past ten.

5956 (Adjourned to Wednesday, February 1, 1928, at 10:30 A. M.)

New York, February 1, 1928.

Met pursuant to adjournment at 10:30 A. M.; present as before.

Mr. Englar: Mr. Axtell, I want to make a correction on page 1292 of the record. It

is agreed between counsel that the passage 5861
read from the statement of the witness
Caracas should read "On most mornings
we carried about 40 men," instead of "On
Monday mornings we carried about 40
men."

I understand, your Honor, we are to have
one hour each side?

Mr. Axtell: I have the mate of the
American Merchant here this morning
about those holes. If your Honor will
recall, Mr. Barrett was questioned very
closely on the question of the size of the 5872
exits for the crews on those boats. Of
course, it is a collateral issue, but appar-
ently he is in error. We have the first mate
here now. We subpoened him, we tried to
get the plans here yesterday afternoon,
but were unable to do so. But you will re-
call that Captain Barrett testified that
these boats had simply small holes for the
crew to escape in the case of an emergency.

The Court: We all understand about
manholes they have on vessels.

Mr. Axtell: But these are regular doors.
The mate is here to testify about that. 5883

The Court: There are some manholes on
vessels.

Mr. Axtell: But they are not for crew
exits in case of emergency. They are to
get from one part of the ship to another to
do work.

The Court: I do not think he means to
swear they are used wholly for use in
emergencies, unless one seaman was in
that particular compartment with a man-

5854 hole instead of a door to it at the time an accident occurred. I think we can get along without that testimony.

Mr. Axtell: All right, you are excused.

Mr. Englar: Your Honor, the petitioner has recognized from the beginning that this case in some of its aspects is a very serious case. I think everyone connected with the case recognizes that no matter what the legal issues may be, it is a case which cannot be dealt with lightly; and for that reason we have permitted a great deal of evidence to go into the record which I think your Honor would have excluded if it had been objected to. We have recognized that this was not a case to be dealt with on any narrow or technical basis, but when all the facts are before the Court, this case, of course, like any other case, must be dealt with on well-settled principles of law.

5855

The pleadings give very little information about the case, as indeed is usual in this sort of a case. The answers charge the petitioner with doing everything wrong that could be done with a boat of this type, and practically the same thing is true of the opening of counsel, a vast number of charges was made. Now, many of them have been so completely disproved that I shall not spend very much time on them.

5856

Another thing, in the time that we have to deal with the case, in view of the enor-

mous record, it will be impossible to cite 5857
pages and read testimony to any considerable extent. I think all of the circumstances here lend themselves rather to inadvertent misstatements in the evidence, because there is so much of it, and none of the counsel have had an opportunity to tabulate it.

So, as I understand the purpose of this summing up, it is for the respective counsel to run over the issues in the case and state their position, what they understand to be the issues remaining in the case, and 5858
state in a general way what their argument is on those issues.

Now, I will take up first the charges of general unseaworthiness that were made against this boat. She was charged with being unseaworthy because she didn't have bulkheads, because she didn't have sheathing, because she was leaking, and because we planned to run her all winter when she was not fitted for such service. I think none of those charges has any substance left on the record. In fact, I think there was none of them that had any substance 5859
left at the close of the claimants' case. I think we might have rested on the claimants' case and been confident of a decision upon all of those points.

The claimants called Captain Charlton, the United States Local Inspector of Hulls, and we brought out from him on cross-examination that of 16 boats, between 15 and 30 tons, motor launches in this harbor licensed to carry passengers for hire, only

5860 two had any watertight bulkheads. We proved by him that the Local Inspectors do not even inquire as to sheathing because they regard that merely for the preservation of the property; they do not make any inspection of it, and they do not keep any record of it, because they do not regard that as a device having anything to do with safety.

Now, it was charged also that the boat was leaking seriously. I do not think there is anything left of that at all. Even the 5861 claimants' own witnesses did not sustain that charge. The only witness they called who had had any long experience with running this boat was the witness Lang, who was examined over at Union City, New Jersey, and whose testimony your Honor did not hear. He had been the night man on the boat for a year or two. Lang testified that the boat was not leaky, and he never had any trouble keeping her dry. The witness Peter Sullivan, who appeared in court, testified to the same effect, and the witness Dressler testified to the same 5862 effect, and their witness Block, who saw her raised, said she was in good shape excepting for the two holes which had been attributed to ice, and for certain leaks which he attributed to the strain of the slings in raising her out of the water. So I think we may dismiss the question of leakage.

The further charge was made that this boat had not buoyancy and stability to carry as many men as she had aboard of

her. If my memory serves me, that charge 5863
was supported by only one man, and that was the naval architect, Mr. Brazell, who testified here and said that he thought she would be topheavy with that number of people on board. On cross-examination it developed that he had not even made the calculations necessary to determine how far she could list and still have stability.

Mr. Block, their other expert, when I asked him whether the boat as a boat, apart from the question of cabin accommodations, was able to carry that number of men, he 5864
said she could. So that even on the claimants' own evidence it is equally divided, and we think we have produced evidence which sets at rest any possible doubt on that question. I shall not go over it in detail, but we called a number of very highly qualified experts, we had the curves of the boat plotted out and carefully checked, and we proved, both as a matter of theory and as a matter of practice, that she was quite able and fit to carry that number of men. In fact, I recall now again the witness Lang, who was examined over in New 5865
Jersey last Friday, testified to the same effect, that she was never topheavy, and gave him no trouble in that respect.

Now, in the early stages of the case, as I understood the claimants' theory, it rested primarily on the charge and the assumption that this boat was habitually run in ice, and that whatever had been the practice in previous years, they had planned to run her all winter in the winter when

5866 this occurred. I think there is nothing left of that charge. In fact, the evidence on that subject is almost unanimous. The claimants called the following witnesses, Mr. Lang, Mr. Gould, Mr. Klahre, and Mr. Dressler, all of whom testified the boat was never run in ice to their knowledge, and the petitioner put in evidence which left no doubt on the subject, the evidence of Stover, Dinkle, Rohweder, Balz and Aldrich.

Now, it was proved I think beyond any
5867 possibility of question that orders had been issued by the Home Office of the company at Buffalo to Mr. Stover, the manager of the plant, and had been passed on by him to every man down the line who had any connection with this boat, that at the first sign of ice she was to be tied up. Now, it does appear that after that occurred they would sometimes, by special arrangement or special orders, make daylight trips when the river was clear. I submit there is nothing improper about that, when you can see across the river and there is no ice in it,
5868 or perhaps one or two cakes, such as my friends pictured. I submit there is nothing improper in a launch starting across the Hudson River in the day time when conditions can be clearly seen for miles in either direction; and the evidence showed that after ice first appeared in the river nothing more than that was ever done.

Now, a good deal was said to the effect that we did not have any observers stationed up the river to tell when ice was

coming down. When your Honor comes to examine the testimony you will find that the first trip on each morning was a trip from New Jersey to New York at 6:30 on the regular schedule, on which she carried no passengers, so that the presence of any ice which had arisen during the night would be discovered on that early morning trip before anybody's life was jeopardized. 5869

Now, the next point as to ice which was made for the claimants was in substance this: That on this particular occasion, during the period preceding the 20th of December, 1926, ice had been so prevalent in the river for days or even weeks, it was even suggested, that Mr. Stover and everybody in the plant was chargeable with knowledge that there was ice in the river. Now, I submit that on that issue perhaps even more clearly than any other, the claimants are defeated by their own witnesses, the witnesses they had, apart from those we called. 5870

Before I go into that I want to say this, there was some ice on Sunday, the 19th, which came down, as described by some of the witnesses, to a point below 95th Street and went back up. That ice was observed by Lang, who made a trip on that day. That is the witness we examined over in New Jersey, whom your Honor did not hear. He testified he saw some ice, but it was of such a character that it did not affect the operation of the boat, so he said nothing about it, he didn't report it to anybody. Mr. Axtell asked him why he did 5871

5872 not report it, and he stated if there was any ice the next day the captain who took her out that day would see it on this light trip.

Now, except for the early morning of Sunday, there was no ice even on Sunday. On that issue the claimants themselves called Mr. Lang, the witness examined out of court, Mr. Oliver of the Cornell Steamboat Company; Captain Gritmon of the Cornell Steamboat Company; Mr. Cook, Superintendent of the Dyckman Street Ferry; Mulhearn, mate of the tug Buffalo;

5873 Mr. Peters of the Yonkers Ferry, and Mr. Quinn, the man from up at Alpine, across from Yonkers; and their testimony proved beyond any question, the testimony of the claimants' own witnesses, that there was no ice even up at Yonkers, twenty miles further up the river, until Saturday, and that there was no ice down here except a little ice Sunday morning just for a short period appeared this far down the river, and then no ice was seen until Monday morning. So I submit there is a complete failure of any evidence to charge anyone

5874 connected with this plant with knowledge that there had been ice in the river prior to that Monday morning. And in view of the definite instructions which had been issued all along the line from Buffalo down, I submit no fault can be charged to the company in that respect.

I may mention this, no one was called to say that there was any ice in the river before Sunday, none who kept any records, could produce any logbooks, or anything

of that sort. There were a few men called, 5875
policemen walking along the streets, who had nothing to do with the ice, who said they thought they saw ice, watchmen, and people like that, people that did not keep any records. But even among the people who did not have any occasion to observe ice, had no occasion to report it, the witnesses for the claimants are about equally divided about whether they saw any ice or not previous to that. And I think it is quite significant, among the witnesses who could not recall having seen any the day before 5876
the accident, was a police officer assigned to the Police Boat Gypsy, to whom ice would be a matter of importance. They didn't recall, they could not find their logs, but they could not recall having seen any ice the day before the accident, nor having seen any then until after the accident.

The Court: Seeing ice Sunday morning, wouldn't that be an indication that the ice was coming down?

Mr. Englar: It might be, but no one connected with our plant saw the ice except the witness Lang, who made no report of it. 5877
And on that issue, your Honor, I want to refer again to the fact that the captain was starting out on the first trip in the morning and had an opportunity then to see whether there was any ice that day, because this ice which drifted down on Sunday morning was carried back up. Whether it would come down again the next day, no one could foretell, and as a matter of fact, on the afternoon of Sunday the river was perfectly clear; there isn't a word of evi-

5878 dence there was any ice in the river Sunday afternoon. Whether it would come down the next day would depend on wind and weather conditions, including the temperature; it might or it might not. But whether it did or not was a fact that could be very easily determined when the boat started out light Monday morning.

Now, I said that there was no evidence for the claimants on that issue supported by any written entry. There is one exception to that, that is, this master of the
5879 "Manisees", who produced a log with certain entries in it about ice, which entries were clearly interlineated after the other entries were written.

The Court: What was his interest in the matter? I rather thought the witness ought to have been examined a little more about that.

Mr. Englar: I do not know what his interest is, but we still have his log here. I suppose we ought to return it to him. My own suggestion is that having undertaken
5880 to testify that there was ice in the river, he did not want to take the chance of having his log to the contrary. I think he simply wanted to support his own testimony. But I think, your Honor, the fact that his testimony is false is too clear for argument, because if he had said frankly and admitted he had made these entries at a different time, he made them after he went home, or something of that sort, we could have only suspected whether that was true or not. But when he sat there and

testified that these entries were made as part of the same operation, that is clearly and obviously false, and I submit his testimony is entitled to no weight at all. 5881

When the petitioner came to that issue, your Honor, we called witnesses from the New York Central Railroad and the Pennsylvania Railroad Company, who produced their records—by the way, Mr. Oliver of the Cornell Company had his records, a claimants' witness, and the first report he had of ice was on this date, the 20th, and the first ice that was reported to the New York Central Railroad Company at their 68th Street float bridges was on one early morning watch on Sunday, the 19th; there was none later during the day. A little further down the river, where the Pennsylvania Railroad has most of its floating equipment, they had no record of ice until the 23rd; it never got down that far. And we called a number of other witnesses, the captain of the tug that docked the boat at our slip on Sunday. I submit on that issue there is really nothing left at all, and I shall not stop now to summarize it because I can do that more clearly, I think, and convincingly, in a brief, where I can cite the pages. 5882 5883

Now, in the latter stages of the trial the claimants apparently began to lay more emphasis on the question of overcrowding, the boat was overcrowded. That question has to be discussed from several different angles, some are questions of fact and some are questions of law.

Summation.

5884 In the first place, I think the proof indicated that she was not overcrowded. Your Honor heard all the estimates that were made by various witnesses as to how many were on the boat. I have not had an opportunity to tabulate them, but as I followed them going in, I suspect that if you take the minimum that the claimants themselves gave, that is, where they say 60 to 70, or 70 to 80, if you take the minimum figure that the claimants themselves state, whether in court here or at the trial in the
5885 Magistrate's Court, or wherever they testified, I suspect that the average of their own testimony will be under 80. Now, many of them of course said 70 or even 80.

Now, the claimants have attempted to give us a check on that in different ways. Of course, we know exactly how many remained in the boat, and how many survivors were brought ashore. My friends have called witnesses to make estimates of how many people they saw outside the boat, and if you add those to those who remained in the boat, you get a figure of
5886 about 70. The only way I think in which the claimants can show there were as many as 80 people on this boat is by taking not only the cases of proven survivors or decedents, but adding to those, as I recall it, about 20 people who are said by some of the witnesses here to have been on the boat. The witness Johnson, who testified in the Magistrate's Court that all but one man, I think, that he knew had been accounted for, came in here and testified that I think

some six or eight men were on the boat that morning that he knew and that he had not seen since. Now, of course, that sort of evidence is practically impossible to check in a trial like this. I mean you cannot possibly run down all the men that somebody thinks he saw on the boat that morning. But if you add to the known cases of the men who were on the boat, everybody that anyone has said he saw on the boat that morning, I think you will get about 80 men. 5887

As I recall it, the total of claims filed here is 71, I think that is what was stated yesterday. 5888

So that I do not think the claimants can make out a case that there were more than about 75 men on the boat.

Now, in discussing this aspect of the case, it must be borne in mind that the master of this boat had definite and positive instructions that he should not carry more men than he had life preservers, and the highest count that has been put forward as to the life preservers on the vessel was 86. Two other men counted them and said 80 and 82 respectively, but the highest count was 86. So that if we get above 86 we are getting into a field for which the petitioner is clearly not responsible in a limitation proceeding. 5889

Now I will discuss the case upon the assumption, merely for the purpose of argument, because I do not concede it as a fact, that there were 86 people on this boat on this last trip.

5890 Mr. Axtell: You do concede it?

Mr. Englar: No, I expressly stated I do not concede it except for the purpose of discussing what the situation would be. The evidence indicates that there were four on the rear deck, and four on the master's platform, which would leave 78 men in the cabin proper. I take it on the evidence that is the limit for which, on any possible theory of the case, the petitioner could be held responsible.

Now, the total area inside the cabin above the level of the seats is about 212

5891 square feet, which is nearly 3 square feet per man. In this statement I am not being exact to fractions of an inch or even a foot, I think my numbers are pretty accurate. I will make them exact in my brief. Now, if we consider only the floor area, which nobody has said is the proper way to figure, we find that even on floor area there was nearly 2 square feet per man, even on that maximum assumption as to the number of people on the boat; assuming she carried the very limit which

5892 was permissible under the master's positive instructions, every man would have nearly 2 square feet of floor space and nearly 3 square feet available in the space at his shoulders.

Now, the question of how many people can be put in a given space, and how crowded they will be in different numbers and different spaces, is something on which I considered giving your Honor a demonstration; but I rather thought it is a mat-

ter of ordinary every-day observation. I thought your Honor could see that for yourself. I mean in street cars and elevator cages, subways and ferryboats, we all of us see people, and it is very easy to figure the space and find how many people are in there. I think your Honor will readily observe that you would have to give every man very considerably less than 2 square feet of space before you get a condition such as a number of witnesses described here, a number of the claimants, where they couldn't get their arms up over their heads, and if they had them up they could not get them down. One man said he could not get his handkerchief out of his pocket. Of course it is possible that a particular man may have been in that position, I mean, a little group may have been crowded in that spot. There is no human way to tell that. But taking the boat as a whole, I think your Honor can readily determine, without much scientific data, that if a man has a foot and a half, one and a half square feet of floor space, and 2½ square feet at his shoulders, he is not so crowded that he cannot move his arms. 5893 5894 5895

Now, so much for the fact on that. I have not time, of course, to dwell on that, as I want to reserve a little time for reply.

Let us assume that this cabin was crowded, that men were in there so that they were uncomfortable, they didn't have enough standing room, that they could not move about freely; here again I do not

5896 concede that at all; I claim just the opposite, but in order to discuss the legal problem, I am assuming it for that purpose.

Now, I submit, your Honor, that in that situation it has not been shown nor is there anything in this case on which your Honor can find that any such crowding as is conceivable from the facts of this case, and consistently with the master having complied with his instructions which he testified he did (I should say certainly the majority of the claimants say that he did),

5897 I say consistently with those facts there is nothing in this case on which your Honor can find that there was a violation of any legal duty by this petitioner. We have here a boat amply fit and able to carry the men, so far as weight is concerned, and all that can be said is that in a particular part of the boat they were crowded.

Now, people are crowded in lots of public conveyances, we all know that, and unless there is some rule of law or custom against it, it does not involve any breach

5898 of legal obligation.

Now, the only witness that I can find whose testimony tends to support the theory that there was any custom or practice contrary to what was done in this case, that is, what the claimants allege was done, was the witness Block, who had had some experience as a surveyor, but his only experience with the carriage of passengers was in connection with one small boat he ran across the North River up at Tomkins

Cove. His testimony comes down, in the last analysis, simply to this: he did not think you ought to carry passengers in a cabin on small boats, he thought you ought to carry them out in the open deck. He said he wouldn't let anybody ride in the cabin in his small boat. Well, it is perfectly all right for Mr. Block to take that view, and to operate his boat that way, but that does not establish any rule that is binding upon other people. 5899

There was a Mr. Rietzke called, but in cross examination your Honor will find that his testimony, so far as it has any weight, tends to support the position of the petitioners rather than the claimants. 5900

I think the only evidence they have really which may be argued as tending to support the theory that we were violating some custom or usage, is the witness Block; and as against his testimony the claimants themselves called two other witnesses of far greater experience, far greater knowledge, ability, qualifications, whose testimony I submit completely nullifies the testimony of Block. 5901

Now, I refer in that connection first to the witness Trotter, the chief engineer of the New York City ferries, who testified on cross examination that in considering the space allowed for passengers you consider not only the space in a cabin or other places where they happen to be at a given moment, but the space available to them on the same deck. We all know by common observations that at certain

5902 places on ferryboats you often find people jammed in very tight. That does not make the boat unseaworthy, there is no legal fault involved, because if anything happens we know that they don't stand that way, people huddled together don't remain that way in the case of an emergency, they do just the opposite, they scatter.

I consider this testimony of the witness Trotter quite important, because if you take the total deck area inside and outside the cabin of this boat, we find that every man had considerably more than the four
5903 square feet of space which was suggested here by counsel was the minimum. I submit Mr. Trotter's evidence on that point is entitled to great weight.

Now, I think an even more important witness in this connection was Capt. Charlton, the Local Inspector of Steam Vessels. Now, my friend brought him up here, and I suppose if there can be an expert on this sort of thing Capt. Charlton is it. I recognize that it is very largely a matter of common sense, and I will say
5904 that Capt. Charlton did not purport especially to be an expert; but he has had a great deal of experience in surveying passenger vessel and fixing the number of passengers, and I think his opinion is probably entitled to more weight than any other man's, viewing that as an issue of fact. He does have to pass on the carrying capacity of boats like this which carry passengers for hire. Of course, this boat was not subject to inspection, but I will

pause in the course of my argument to point out parenthetically here that both sides have referred frequently to the rules of Inspectors applicable to boats of this type which are subject to inspection. And I submit that you cannot find a fairer standard than that. In other words, if she had been charging a fare we could have gone down to the Custom House and gotten a license. And I will mention at this point too, because it follows logically, if we had done that the number of passengers to be carried on this boat would not have been limited, because the statute on that subject specifically exempts ferry boats. In other words, it recognizes that on short trips across narrow waters it is impracticable to limit a boat to a certain number of passengers, so long as she is able to carry them as a boat, but they do not require that every passenger have a certain space, because ferryboats, like all other systems of transportation, have their peak hours, when people stand up and when they crowd; and if ferryboats had to be designed to give everybody in the peak hours a seat, or 12 square feet of space, or something like that, you simply could not carry them. 5905 5906 5907

In fact, there has been reference to a Supreme Court decision holding you do not have to give everybody a seat on a ferryboat, and it is well recognized that that is so.

Now, Capt. Charlton, who fixes the number of men who can be carried on a

5908 boat in those cases where there is any limit, was examined at some length by my adversary. They stated to him, gave him the dimensions and the exits and all the description of the "Linseed King", and asked him if a large number of men were carried across, whether he thought there was a reasonable, whether they could be carried with reasonable safety, and specifically whether they could get out; he was asked would they put on life preservers and get out, or would they get out and take life preservers with them.

5909 Now, Capt. Charlton's answer is very carefully worded. I mean it is a logical answer which seemed to me like a ray of light in general darkness. He said: "I should think that they could get out of a place like that; if for any reason they were confined in a space such as you describe I think it might be somewhat difficult to get down life preservers and get them on."

Now, that, you see, gives us something; there is something logical there that you

5910 can take hold of, there is some reasoning there. We have had people get up there and say the boat was crowded, and say you shouldn't do it, you shouldn't carry men in the cabin, and that sort of thing, which is vague and gives us nothing tangible to go on; it is just the opinion of some individual.

One witness said, "I do not think it ought to be done." And if the case is one where such opinions have to be formed,

I think they should be formed by your Honor and not by these various individuals. But here is the judgment of Capt. Charlton in which he carefully distinguished. He says he thinks they could get out of a place like that, and then he says, if for any reason they were confined in a space such as you describe, he thinks it might be somewhat difficult to get down life preservers and get them on, your Honor will see he means for them to take a life preserver with them. He says if for any reason they were confined in there, and of course they were not, and they were not supposed to be confined in there. Of course, it is not assumed in any emergency men will stay in a place like that. 5911 5912

Then the examination of Capt. Charlton continued; he was asked if he would not expect a loss of life under those circumstances, and he said, "No". And he went on to say: "Generally speaking, from my own observation and opinion, these small boats, as a rule, carry what would be considered a large number of people for them safely. We see it every day in the summer season. "Q. Open boats?" A. Yes. Q. Open boats mostly? A. Yes, and others; I have seen them with cabins, and you could put a large number of people on board and do it safely." 5913

Finally, after a long series of questions, he said: "Usually these small boats can carry quite a number for their size, about as many generally as they can get on."

5914 Now, Mr. Charlton then went on to express the view that 3 square feet was enough for each passenger, and that in figuring that area he would consider not merely the floor area, but the space above the seats, where they could move along. After all, it isn't a man's feet that need the most space, it is his arms and shoulders in an emergency.

Then Mr. Charlton also made a very significant statement, another statement. I think when your Honor comes to consider this you will find it has a great deal of

5915 force. He was asked: "How much, on excursion boats that you do inspect, how much cabin area do you allow per passenger? A. The cabin area is not figured as such." In other words, they do not distinguish whether it is cabin area or otherwise, which to my mind is a complete answer to Mr. Block's theory that your boat becomes unseaworthy as soon as your men are put in a cabin.

I submit on the claimants' own case, your Honor will note I have not yet men-

5916 tioned any witnesses called by the petitioner, I have simply taken their own evidence; I submit on their own evidence there is a total failure to show violation of any legal duty by this petitioner in connection with overcrowding. And when we consider our own witnesses it seems to me that any issue there might be is removed.

Mr. Barrett and Lieutenant Commander Hale, both well-qualified witnesses, both

said they considered the boat seaworthy to carry 86 people. And Mr. Clayton, who built the boat and who had a great deal of experience not only in building boats but in operating them, carrying passengers, not only thought she could carry 90 men, but he told Mr. Stover so. That appears not only from Mr. Clayton's testimony, but also from Mr. Stover's, that that was his advise, his opinion. 5917

Now, I submit that on those facts presented to your Honor they have not shown a violation of any legal duty in this case. The claimants' position, as I gather from statements made here both in the beginning and the close of the case, is that in a case of this sort, which naturally arouses the sympathy of any person, it is unnecessary to proceed on legal theories, that the mere horror of this occurrence requires a decree for the claimants. 5918

I submit, your Honor, that that is not so, and I want to say a word on that general subject before I close on my direct.

I submit that this is the very sort of case for which the limitation statute was designed. We have here people who are operating a boat; they do not know anything about boats, they are not boat builders, they are not boat operators. They employed experienced and competent men to build them a boat; they employed a very skilled and experienced man to run the boat. Now, this disaster happens; it is a shocking thing, but I submit that it 5919

5920 is not an occasion for depriving the petitioner of the protection of the Limitation Act, but on the contrary, this is just the sort of case for which that Act was designed.

The Court: Are you quite sure the Act applies to a boat like this, if this boat was used privately by them to convey their workmen?

Mr. Englar: I do not think there is any question about that. I did not come prepared to argue that question; I thought it was clear. But in my brief I will go
5921 into that point.

Take people in our position, what do we do? We get an experienced boat builder to build the boat. Your Honor will remember Mr. Medlicot, the former manager, who went around getting witnesses together, I mean he wrote letters, he testified that he got a very good boat builder, and got the boat built of very good material, and so on. Now, to a landsman who does not know anything about watertight bulkheads, buoyancy
5922 tanks, and that sort of thing, he gets a man to build a boat, and that man is able, and he thinks he has got a good boat. He gets an experienced seaman to run her, and he complies with every legal rule that he can find that will apply to this boat if she were a ferry.

I submit, your Honor, the responsibility in that situation lies not on this petitioner, but on the United States Government; they can make rules, they have

jurisdiction over this boat, and they can make any rules that they see fit; they can make them apply to this boat, and they can make them more stringent than they are. But I submit that an ordinary boat owner, operating a small boat, well-built, stout and staunch, well kept up, who complies with every legal regulation he can find, is not to be held responsible for a disaster to that boat merely because, as it is said, there were a large number of people on the boat. Of course, obviously, if there had been less people on the boat, the number that could have been lost would be very much reduced. 5923 5924

But if the Limitation Statute is to be set aside in disasters of this kind, then I submit, your Honor, it is of very little value. It was passed to protect ship owners and encourage the citizens of this country to own and build and operate ships, and if it be suggested that they should not operate this kind of ships, then I submit the Government which undertakes to encourage them to operate ships, should lay down rules to tell them what kind of ships they can operate. That is a matter on which the Government can make regulations. 5925

I only want to take another minute or two. Even if this boat was overcrowded on this occasion, your Honor,—I have not time to go into this, I will simply state my position—even if your Honor should find that this boat was overcrowded on this occasion, that there was some legal

5926 fault involved, I submit there is no knowledge or privity shown here of this corporation, none, certainly none on the officers, and I submit none on Mr. Stover, because Mr. Stover explained at great length under cross examination, and again yesterday, there was no occasion to overcrowd this boat. Under the system she was ordinarily run, there was ample room on that boat, and if she was overcrowded on this occasion, there was no knowledge or privity of that brought home to this corporation. And Mr. Stover has testi-

5927 fied, and he was confirmed by everybody in the case, that has spoken on the question, that he gave specific instructions on that particular morning to make an extra trip. That was passed on to the captain, and what happened? The captain may have been a little late getting away, he may have been delayed by this ice in the river in getting to the dock, or whatever the situation was, we do not know. And I will take the same position as to how the boat came to be injured; I do not

5928 know.

Mr. Axtell very frankly conceded at the outset of the case that he did not charge the captain with any negligence, and it may well be that this was simply a peril of the sea. I shall not argue that, because as it happens, the amount of money involved on the question of liability here is so trivial compared to the issues at stake that I do not care to argue it. I do not admit any faults or negligence, but

I prefer not to argue it; I would rather devote my time to other issues. 5929

There are only two other things that I want to mention. As I have stated during the trial, I consider that most of these claimants at least are barred from making such claims as they have put in here, or indeed any claim in admiralty, by the New Jersey Workmen's Compensation Act. And I wish to argue that point with your Honor. I recognize up to the moment your Honor has taken the view that it is unnecessary for you to decide that issue, but I should like to submit it for your consideration. 5930 Then another thing, it has been suggested, your Honor, that our certificate here should have been changed when we put these windows in; that we were running under an illegal certificate, as Mr. Axtell phrases it.

Well, now, it was first suggested that the top of the cabin had been raised, and that that changed the tonnage of our boat. We disproved that, and the records of the Custom House, which it turns out were not really official because they had not been forwarded to Washington, have been changed. 5931

So that, as the case stands, the only particular in which this boat had been changed was that in place of canvas curtains we put glass windows.

Now, the question whether that does change the boat's tonnage has come up in two or three cases, one in the Sixth Circuit, and one in the Seventh, and in both

5932 cases it was decided, contrary to the ruling of the Bureau of Navigation, that that did not increase the tonnage. And in those two Circuits, I understand that the Bureau of Navigation follows that rule, but elsewhere they follow their own rule. I have found no cases to support their own rule; as a matter of fact, those two cases settle the law, there was no change in the tonnage.

I think the best known case is the "Messenger", which contains a picture of the boat. It is on all fours with this case.

5933 I will preserve what time I have left for reply.

Mr. Axtell: I have agreed with Mr. Jayne that he shall take part of the time, your Honor.

Mr. Jayne: Your Honor, counsel for the other side has said that there was no legal responsibility for the crowding or the conditions in question upon this boat. He also said that if these conditions were bad, rather than it being the fault of his company, the fault lay at the door of the

5934 United States Government, and that they were to blame for not having made regulations that would remedy it.

He also said, in answer to the argument that was made at the close of the petitioner's case, when I impressed upon your Honor the fact that this boat was overloaded, that there was no law that had been violated, no statute had been violated.

Those three statements made at differ-

ent times somewhat seem to tie up with 5935
each other, and make the inferential argument at least that this company here did not violate any statute about the loading of this boat, therefore the boat wasn't overloaded, and if she was overloaded it was the fault of the United States Government for not making a proper regulation.

I am not so familiar as the other counsel here with admiralty law, but I presume that it is a law that grew out as a growth of common law, and that the same 5936
rule of reason as to negligence applies to it, and that it does not ignore the law of common sense and the law of reason in determining what a legal duty is, and particularly in determining what is reasonable care, when reasonable care becomes a duty, and on the reverse side of the shield, what is negligence.

Now, it has been said time and again in many, many courts, that reasonable care in any given circumstances is that care which is commensurate with the danger reasonbly to be anticipated, and it is 5937
our contention here that that is where the Kellogg Company violated their legal duty, because they did not use, with respect to this boat, that degree of care commensurate with the danger to be anticipated.

The Limitation Act is one also with which I do not claim the same familiarity as my friend, Mr. Englar, or my friend, Mr. Axtell. But my understanding of the

5938 intent of passing that Act was this: that in the early days of this country, it was recognized that the growth of the country and its expansion depended very largely upon shipping, and that in consequence shipping should be encouraged for the growth and development of the country. The boats were wooden boats in that day and generation. When a man bought one thirty-second he put in $1,000, and he would not put in that $1,000 and buy a thirty-second interest in a wooden boat if
5939 he stood a chance of having his little home swept away from him in the event of her loss. Therefore a Limitation Act similar to the Corporation Act was devised to protect and encourage commerce with other countries, and necessary commerce and shipping.

Now, here is a boat that is a private boat, she is no different as to her ownership by this company than the yacht that was owned by Mr. Kellogg, in that she is a private boat, not being operated for hire or not being operated to carry any
5940 commerce except the commerce in human souls across this river without their paying any fare therefor, so that it is not the kind of case for which the Act was designed, although under the decisions the Limitation Act has been applied to meet many situations. It is not a case that lies within the original purpose and original intent of the Act.

But I only advert to that as an aside upon the principle. And the situation is

that the Act prescribes that owner shall not be responsible for any damage or negligence (I am just reviewing that, it is well known to your Honor, of course), unless that negligence—there shall be no limitation, as I understand it in a general way and in a broad sense, without the negligence that resulted in the loss of life or in the damage or in the disaster—was negligence that was known to the owner of the boat prior to the beginning of the voyage. 5941

Now, reverting back to the principle that their legal care and duty is to conceive those dangers that can be reasonably anticipated, and to guard against them, what were the dangers to be reasonably anticipated and to be guarded against, and which were known to the managing agent of this corporation, as to whom proof is undisputed that the duty had been delegated with respect to this boat and was responsible for it in so far as he had knowledge? Why, he knew he had a wooden boat, he knew she had no bulkheads in her, and he knew ice or any obstacle which she encountered would sink her, and he knew that ice came into the Hudson River in the winter time, and he knew that no man could say when that jam of ice was going to come down the river. 5942 5943

One of their own witnesses, called by them, a very intelligent man, apparently, said that ice will come down the river in big floes over night, and no man can tell

5944 when it will come. They knew all that, or were charged with the duty of knowing it. They knew one other very significant fact, and that was that this boat was operated on this first trip in the darkness, so that whether there was a floe of ice 100 yards up the river when she set across, or when she set back, was a thing that could not be known on account of that darkness. They knew or should have known that there was ice in the river the previous day.

5945 Capt. Dinkle knew about it, and he was their captain. Mr. Stover said, when he stood on the roof of the plant on the day before, he was taking full responsibility with respect to this boat, so that he was looking for ice, and although the ice was in the river on that previous day, and although, by saying he was looking for it, he recognized his responsibility, he saw no ice that day. Stover knew or should have known, running this boat without any bulkheads, and only with a wooden frame, that there had been very severe cold

5946 weather in the early part of the month, and that had been followed by a thaw, and that, on one day, on one dark morning, that ice was going to come down the river, they were charged with the duty to take knowledge of these facts particularly under the circumstances, and having knowledge of these facts, they knew that this was the danger, one of the dangers, to be anticipated to this boat running in the darkness across this body of water with its tides

and its currents and its ice which was coming one of those mornings and came this morning; and they didn't take this boat out at the first sign of ice, as they should have done. 5947

Dinkle said he ran the boat in the ice at different times, and states his conclusion as to when the boat came out rather than the fact. He says the boat came out when the ice was too great for it to be operated in the ice safely. I say that as soon as there was the slightest possibility of ice in this river, that this was not a safe boat for this number of people. But I am not stating those as primarily a ground of limitation by themselves alone, although I think they are sufficient and adequate from my judgment and knowledge as a lawyer dealing with negligence cases, but only as stating a background as to the conditions that they knew about and conditions that existed in that river. 5948

We come to a point of negligence that was far more obvious and as clear as black is clear from white, in my opinion, if your Honor please, and that is this; Knowing that this river was in this condition, and that these things were to be anticipated, these dangers, knowing the character of their boat, knowing that she had no bulkheads if she was stove in she would sink rapidly, knowing that if she sank rapidly in the darkness by striking a piece of ice on one of these early morning voyages, yet nevertheless in that situation, although they should have reasonably anticipated if 5949

5950 they are going to let their boat run in that situation, it is a reasonable anticipation that the boat, that the men will have to quit the boat; yet they put people in that boat to such a degree and to such an extent that they could not quit the boat.

Mr. Englar refers to the distinguished Mr. Charlton, who took the stand here and hesitated and hesitated and was very fearful of saying anything that would give him any degree of responsibility as a witness in this case, and says Mr. Charlton testified that with this cabin as it was there was

5951 plenty of opening, plenty of room for all of these men to get out of the cabin.

There is testimony stronger than the opinion of an expert. I wouldn't give a nickel for the opinion of every expert that has been called here, myself, because I have hired experts and I have seen other people hire them, and they generally testify for their employers. Mr. Charlton, I do not mean to say he was that kind of an expert, but he came as an expert, not as a hired expert, but he is talking about him as an

5952 expert. That testimony which outweighs Mr. Charlton and bears testimony directly on the occurrence better than any expert in the world is the mute testimony of the 27 bodies that remained inside the cabin of the ship after this disaster.

Mr. Englar says they could all have gotten out, said so himself of his own opinion and of his own judgment; therefore I presume Mr. Englar must think that these 23 men, with their wives and babies at home, chose to die on that morning——

Mr. Englar: Your Honor, I submit that my opinion needn't be brought into this. 5953

Mr. Jayne: If your Honor please, I am arguing against his opinion here, and I think I have a right to refer to it in that situation. Those 27 men were not the only men, I do not presume, who were trapped like rats in the cabin of that boat on that day, because this boat floated up the river for several miles after this occurrence, with the tide, and with the current flowing through here, and the doors at that time open, and no doubt floating as she was awash just at the top of the river, speaking of these other 30 or 40 missing bodies at that time, although there could be no exit in the struggle of humanity that was in the cabin, others in death made the exit that they could not make in life. 5954

Now, if your Honor please, I presume there would be no question if there were no life preservers whatever upon this boat, and these men drowned, unable because of a lack of life preservers, to save their lives, that there could be no limitation in this case. I presume that is the law; I do not know whether it is or not. If it is the law, is it any alibi to put 86 life preservers on a boat that seats 36 men, and then crowd 88 people in there so tight that they cannot even get out of the cabin in the case of a stoving in of the boat, which was a danger reasonably to be anticipated in this river at that time of the year in the darkness, under all those circumstances? Is it, I say, any alibi to have the 5955

5956 life preservers, when you have the people crowded in there the same, according to their own witness, with the same percentage of floor space that the people have that are jammed into the subways?

Now, if your Honor please, if the owner of this boat had to reasonably anticipate that these people might have to quit the boat because of that reasonable anticipation and that it required the providing by him of life preservers on the boat, the owner also had reasonably to anticipate the use of those life preservers and the

5957 space in exits, and the floor space in the boat necessary to get out of the boat, to put on a life preserver and leave.

Mr. Stover says yes, yes, I admit that these men had to put the life preservers on in the cabin; that was his view of it, he said he anticipated all this, he thought they were going to put them on in the cabin, and that is why the life preservers were all put in the cabin.

Now, on the question of how many men there were on the boat, counsel was edg-

5958 ing up. He got up in his last statement to 75. He first said 70, but the last time he spoke he said 75 men. Now, I am informed, I have not made this count myself, but it will be made in our briefs, no doubt, that there were 28 survivors proven besides the captain, and one captain, and there were 27 bodies in the boat, and there were three other bodies found afloat within the next day or two. There were five bodies found two or three or four or five

months subsequent, in different Morgues, and there were 23 other bodies as to which there was definite proof that they were on the boat and their bodies are missing and have never been found, making a total of 87 which was on the boat. 5959

Now, was that a usual condition and did they know about it? The witnesses testified that it was, that were in the boat. The witnesses testified in another way to determine how many were in the boat; that they were crowded in there as tight as they could be crowded in, and the petitioner has carried out certain experiments in this situation and found that they could get some 85 or 90 men inside of that boat if it was crowded full in that way. They have shown us here a picture with 80 men in, and they admitted with those 80 men in the boat, that they could only get the 80 men in the boat with the cabin off of her; they didn't suppose they could get so many men in the boat with the cabin on. And yet here is definite proof of 87 men in the boat with the cabin on her, and going across the river. 5960 5961

Now, I say that right there there is no need, there are many, many, many facts, many different things that could be said in addition that all point in this same direction, and dovetail one with the other as to the overloading of this boat. One fact, for example, is this: If she had 86 men on her, or 89 men on her, she was going to sink much faster than if she had 36 men on her, and that was a thing for

5962 them to take into consideration when they determined how crowded they were going to make the conditions in that cabin. That is only another reason why the cabin should not be crowded in the same way that you jam a subway train.

A subway train in this city is recognized by everybody, it is a matter of common knowledge that it is dangerous the way the people are jammed in there on a subway train, although one of their experts even said there was water in the subway, but certainly it is not a situation that is

5963 commensurate with the danger of a small wooden boat such as this boat was.

Another argument that they make is that this boat was a ferryboat, and because she was a ferryboat they could do anything that anybody ever did on a ferryboat. This boat wasn't a ferryboat, it was a launch of the most ordinary type, being used as a ferryboat when it should not have been used as a ferryboat. A ferryboat is a boat of wide beam with a lot of floor space. We have had the testimony here

5964 on the Municipal Ferries that they are of steel, they have bulkheads in them, five or six bulkheads, and they are protected with armor [redacted] feet out all around the sides, and so forth, and so on, and every man has got 7 square feet of space, of deck space, even when they are crowded. They carry something like 2500 men in a crowd, and all that evidence is in the record; I do not know just what it is.

And yet these gentlemen are ardently

trying to show because a ferry can do these things, that they can take this wooden boat and do the same thing. 5965

I say here that the thing that was violated was no statute of the United States, but a statute much older than any statute of the United States, and that is the statute of common sense, that they did not use common sense in apprehending and appreciating the dangers in operating this boat reasonably under the circumstances and the dangers that were present, when they crowded those men in in that way. 5966 They insisted that there should be all these different things, that they should be standing in the doorways, that they should be standing where a door opened to an emergency locker where they kept other life preservers, and that they should be standing all around the engine so they couldn't get around the engine, and even have them standing around the captain so he could not move, in order to get the 87 or 90 men on board, just as if it was not the custom of the sea that the captain's pilothouse should be reserved for himself alone and there should not be any passengers allowed in there. 5967

But they did all these things, trying to stretch a few figures and a few dimensions that has gotten them in chancery so they cannot get out; and those figures were figured right here by their own expert. Certainly in a theatre, and this wasn't a theatre that was being operated, this was a boat out in the middle of the Hudson

5968 River, full of ice, and it had people in it, in a theatre if you had them sitting in every seat and every aisle filled with standing people, and across every doorway, so they were jammed full, that certainly would be negligence, and yet they attempt to say here that these men should be standing in the doorways, on the steps, in front of the engine, and so on.

Their own expert admitted here that there was only 113 square feet of floor space in that cabin.

5969 If, in a seaworthy manner, you left open the steps, no people on the steps, no people in front of the door, and just left the slightest possible space you could reasonably leave there in that 113 square feet of space, there were 86 people that were much tighter jammed than they were in their experiment, which was made on a much lesser percentage and basis.

Take the other situation about this matter as relative to other boats brought in this proof here, as to what these other boats would carry. This boat with her

5970 cabin on her was something like 17 tons, the "Linseed King." What would common sense require on the other boats?

The "Al John," 20 gross tons, was allowed 40 passengers.

The "Atlas," 26 tons, 10 tons more almost, 9 tons more than this boat, was allowed 48 passengers.

The "Comfort," 17 tons, the same number as this boat, was allowed 48 passengers.

Summation.

The "Doris," 28 tons, was allowed 137 passengers, and we showed or attempted to show she was a double deck boat. 5971

The "Kentoo," 15 tons, allowed 60 passengers, and that is the largest of them upon the list as to the percentage.

The "Grace E. Phillips," 18 tons, was allowed 45 passengers, one ton more than this boat.

The "Hercules," 17 tons, the same as this boat, was allowed 16 passengers.

The "Cid," 15 tons, was allowed 16 passengers.

The "Lydia R." was another boat that was referred to, 23 gross tons, allowed 67 passengers. 5972

Not a boat where they allowed as many as 87 passengers or 86, on a boat of this size, even when they were fishing boats and excursion boats used largely in the summer time and not in the winter time. This boat was running across there in a condition that is recognized as dangerous, and yet they are putting practically twice as many men in the boat in that recognizedly dangerous condition as is allowed for a summer time pleasure boat taking out parties for hire. 5973

I am dividing my time equally with Mr. Axtell, and he reminds me that my time is up, and I have of course only covered one very small phase of the case; but it is my opinion, which I respectfully submit to your Honor, that if the limitation of liability act which was passed, as I said, to encourage shipping, encourage com-

5974 mercial shipping, if that Limitation of Liability Act as written and as heretofore interpreted by our courts, can be so stretched as to cover and include this particular case, which to my mind is one of the most horrible so far as negligence and lack of forethought that has ever happened in this harbor, God help the legislators that designed the Act and those Judges who have heretofore interpreted it, that had so little vision as to say that this case could come within its provisions.

5975 Mr. Axtell: I am inclined to think Mr. Jayne is right about the intention of the legislators not to intend this sort of ship applicable under that law, but I think it would be unfortunate if the decision were made on that ground alone, because the point will be raised before the Circuit Court of Appeals in this Circuit within a year in regard to a houseboat, which we say clearly does not come within the Statute, on the simple ground that she is not a merchant vessel, and the Act was intended to encourage commerce and

5976 had nothing to do with private craft of this sort that have had nothing to do with our merchant marine development.

I want to direct your attention to the interpretation of the law upon the question of liability of the corporation, or his knowledge. I presume Mr. Englar will not dispute that the law has been stated correctly in the Sanford Ross case, where the Court said:

Summation.

"The petitioner is a corporation, and is charged with the knowledge of its officers or agents who have charge of the particular subject matter. Undoubtedly its high officers were not personally informed as to the details of the equipment of all the vessels belonging to their corporation. But it had a superintendent whose duty it was to see that all vessels were in repair and properly equipped. The petitioner failed to show that the absence of a chock-block was without the knowledge of such superintendent. It failed to show that the pile driver when built was supplied with a chock-block or that it ever had one. Consequently, the petitioner failed to show want of privity or knowledge and, in view of the common law judgment, fails to bring itself within the limitation of liability statute." 5977 5978

That is the law. There are plenty of other cases showing it. If this superintendent, Mr. Stover, had knowledge of the unseaworthiness of the vessel, any unseaworthiness, then the petition must be denied. Now, what do the records show here, the records that are open to all of us, of which they are presumed to have as much knowledge as we do? There is absolutely nothing in the plea that, being ignorant of vessels, being ignorant of boats, they are entitled to immunity from the consequences of their own negligent acts. Possibly that would be a defense if they were being tried here as somebody ought to be under a misde- 5979

5980 meanor statute, for sending a vessel to sea in an unseaworthy condition; that might be a defense to a jury, but it is no defense to a court of law. The records of the United States Weather Bureau show that the Hudson River was actually closed to navigation as early as November 13th, as early as December 7th, December 4th, December 3rd, and December 5th; even on that year it was closed on the 9th of December. The Hudson River boats that run up the river during the open season
5981 were laid up for some time. Incidentally, we produced the superintendent of the dock here, who testified about the ice in the river for some time prior to this accident, that it had drifted against the shore there at the dock.

Apparently the course of that ice development in the Hudson River is that it comes down slowly, gradually creeping beyond Washington Point, you had the chart here to show it, show how that does hold it back sometimes, and then it gets around and comes in down around 150th
5982 Street, down to 130th Street, where the Dock Superintendent testified about it. It gets into the piers on the east side of the river, the prevailing winds being from the west or north, which drives it into that side. But right next to this pier, according to the Superintendent of the City of New York, whose name I have forgotten, he has lived here for thirty years, born up-State somewhere, a man of excellent character, no reason in the world for testi-

fying falsely, brought here without any preparation, put on this stand, and he testified that there had been ice there for several days before this disaster; and he was the man in charge of that pier at 95th Street, Mr. Pollard. 5983

I do not think there is any doubt but what the man that goes around the harbor picking up logs testified truthfully as to the first ice on the 14th of December that he saw at Governor's Island. When pressed very hard by Mr. Englar as to the entries in his log, he did, it is true, indicate some doubt—I myself am frank to admit that—but it does not go to the weight of his evidence. You will find the entries in his log are written in pencil, and possibly written in afterwards, that is, they are at the end of the entry, and you will find that is true of the entries of other men who have testified here, even true of the log of the Pennsylvania Railroad man who testified. He was a rather courtly looking gentleman, you will recall, and he said he had not seen it until the 23rd. I have no doubt he did not see it until the 23rd, way down there. But this ice was coming down the river gradually, coming a little further every day. We have undisputed evidence of tugboat captains and men who have been in the river for years that the tide will carry that ice as much as 14 or 15 miles on a single change of the tide. 5984 5985

The fact that Washington Point is there and does keep the ice back sometimes, and

5986 they have knowledge of that fact, or should have knowledge, is all the more reason for being on guard. This ice resembles a piston, you might say; it will come with an intermittent and irregular stroke down the river to crush those little boats.

Why, it was the duty of this company to do as Mr. Medlicot had done before, lay the boat up as soon as the water would freeze in her bilge; that is the time to lay up a summer boat like that.

5987 There isn't any doubt the man who conceived the idea of putting those glass windows in in that fashion was an ignoramus of the first order, absolutely. He meant well, he was thinking about protecting the men from the cold, I haven't any doubt about it. He didn't think about providing a bus at this end to distribute them around to their places in New York, but coming out of the plant where it was warm, I have no doubt it was a good intention on his part. But that does not excuse them. They made a trap out of this boat. The exits at the rear opened

5988 inwards, violating all common sense and practice. The exits, the holes in the front, were inadequate. It is true that a great many vessels are built without bulkheads, and it is also true, as your Honor remembers, that vessels used to go to sea without Plimsoll marks, and crews were lost, and you will find that when Parliament enacted compulsory legislation requiring that, that there was a great deal of complaint about it, but the mere fact

that they had not acted on it before that time did not excuse the negligence of ship owners in regard to their vessels. 5989

So here the mere fact that the United States Government, with its thousand of legislative duties, has failed to enact laws which would cover the operation of boats of this character, does not excuse those who are living under the protection of the other laws of this country from discharging the common duty that they all owe to those they invite to ride on the boat.

Take the "Doris", for instance; why, there is no comparison. She is a regular steamboat, heavily built, 18 foot beam, 60-some feet long, a much larger vessel, twelve hundred and some square feet, five or six times the carrying capacity of this little boat. 5990

The sunrise on the morning of that date, December 20th, was 7:25. We had the testimony of Mr. Stover and Mr. Balz and others that this man was supposed to cross the river and be on that side at 6, leaving over there at 5:30, two hours before daylight. There wasn't any provision made against ice under those circumstances. Didn't they have reasonable grounds to suppose there would be ice? Even their own employee, Mr. Lang, whom I am sorry your Honor could not hear, a most pleasing youth, guileless, as Mr. Englar and I both agreed afterwards, truthfully told everything he knew, without reservation, said, "Yes, I saw ice, but I did not think it was dangerous." It was the first boat 5991

5992 he had ever operated in his life. He had ridden on one other boat. He had received some instructions.

As an example of the greatest carelessness, think of the idea of five or six different men operating this boat within a period of a couple of months, one of them Klahre, a man of crass stupidity, as evidenced and demonstrated here on the witness stand, entrusted with the lives of these men on the Hudson River with a vessel of this character. Why, the man ought to be in
5993 an institution for the mentally defective, to put a man like that on a boat. It shows the utter carelessness, the utter indifference and the utter ignorance, depravity, I should say, of this defendant. Why, its whole personnel, from start to finish, proves an inferior class of employees, I should say from the head of the company down, shows a lack of intelligence. My only concern is that they keep solvent long enough to pay what they ought to pay.

The Court: May I ask you, are you urg-
5994 ing that the captain of the boat or the management of this concern, should have anticipated there was ice in the river, or under the arrangement that they had a right to wait until someone perceived ice in the river, or until they saw that there was ice in the river, I mean the manager or the captain of the boat?

Mr. Axtell: They should have discontinued the running of the boat, they should have anticipated it; they admit that the vessel was not fit to run in the ice. They

could have built a steel boat, and they could have run that all winter if they wanted to. They could have built a regular ferryboat and they could have a slip for her. They could have had a way of checking the number going on, controlling them, the same as other ferries, but they did not do those things. But operating the kind of boat they did, which might have been half way safe, if not overloaded, in ordinary weather conditions, it was certainly their duty to lay that boat up before there was any danger of ice, unless they were to maintain some system of absolutely guarding against it, and that they admit they didn't do; they all admit that, Balz and Stover and the rest of them. 5995 5996

The Court: You mean the weather was so severe several days prior to the time of the accident that they should have anticipated it was freezing up the Hudson River, and the tide would bring it down?

Mr. Axtell: Yes, I have evidence here in this weather report. The weather was as low as 17 on the 2nd day of December, 15 on the 3rd, 11 on the 4th, 11 on the 5th, 13 on the 6th, 11 on the 7th. Then there was a warm spell; 27, 25, 31, 29, 29, 37, 21, 24, six days that the weather was not freezing, after a seven-day freeze. Now, ordinary common sense, if they were thinking about it at all, could have told them that ice could be expected following that thaw. Ice did actually appear, according to undisputed evidence, in the slips at 72nd or 68th Street, on the 18th, that is, 5997

5998 36 hours before this disaster, at 12 o'clock, according to the New York Central man who came here with his logbook; that it was there several days before that at 95th Street and 130th Street is indicated by the watchman of the Hudson River Company and the mate of that vessel, and at 75th Street, several days before, where the vessel docked by the city employee who is known as the Dock Superintendent, Pollard.

Now, as to laying her up, we asked Mr. Rohweder about that, page 466 of the

5999 record:

"Q. They were to determine when those conditions became such that the boat was to be laid up? A. What is that word?

"Q. They were to determine when the conditions were so severe— A. What do you mean by 'determine'?

"Q. They were to decide? A. That is right."

Then there is the testimony of Stover, the superintendent, and we cannot, there is no use in this short argument going any

6000 further than the testimony of these two men, at page 624:

"Q. You recognize you were responsible for operation and for when she operated and therefore that is why you made these observations? A. Partly the reason.

"Q. You wanted to see if there was ice in the river, and if there was ice in the river, you would have told the captain not to run the boat? A. I would have told him not to, yes, sir."

Now, there is no chance for them to es- 6001
cape from the horns of this dilemma. They have complained that we did not inform them about overcrowding, that that was our principal claim of negligence. It is set forth in the pleading, and in my opening statement I definitely referred to it. They admitted 86 life preservers, and they intended to carry that many.

Mr. Jayne has correctly given the proof, which cannot be disputed from the admitted evidence in this case, of the 86 bodies, 86 persons on that boat. Mr. Englar isn't 6002
willing to concede it even now, but the police records, the Morgue records, prove it, and they are admitted as legal evidence in this case.

It would have taken us perhaps two or three weeks longer, and the issuance of commissions, to have proven the presence of these persons upon the boat, and that they were lost on that boat, if counsel had not consented that these police blotter records go in as evidence; but he knew as well as we did, in fact, as everybody does, the Police Department and the Dis- 6003
trict Attorney's office, that there were that many there, these people were on the boat that morning.

Now as to crowding, will you let me have the affidavit of this witness Lang? It is in evidence. Now, it was dark that morning. Of course, we can draw an inference from the time the sun rose, an hour and twenty-five minutes, or an hour before sunrise, you cannot see in the winter

6004 time, and there is some evidence that this was misty, that morning.

But at page 90 we have the testimony of the captain himself:

"Q. You could not see them very well, could you?" That is speaking of the dock at this side of the river. "A. I could see a big bunch of men on the pier.

"Q. But you could not distinguish their features? A. Whenever they got in front of my window I could see.

"Q. Only with artificial light you could tell that they were there? A. My lights in
6005 the boat were burning."

The Court: What importance do you attach to the fact that this boat was in charge of just one man, the skipper, and no one else?

Mr. Axtell: I was going to advert to that with relation to the overcrowding.

The Court: Your idea is if there had been another man, he could have controlled the number of men coming aboard?

Mr. Axtell: Yes. Of course, 86 was too much of a crowd for that boat. I think
6006 it was absolutely unwholesome to suggest that they were discharging their reasonable duty to these people they invited to ride on their boat, and they invited strangers too, to allow that many people to be crowded into that kind of a cabin. If she had been an open boat, as she was in the beginning, with her sides out, just canvas curtains, which could have been pulled down or pushed up out of the way so that they could have jumped out of her

with speed, there would have been less loss of life. But even with an open boat —I have ridden in a tender out to a sailboat that I owned at various times, just a little tender 10 feet long with four people in it, and she was submerged to the water line, but that was only for a short distance and was a private matter. But this is a very different thing from a person taking his own life in his hands for a short distance, and inviting all these people, some of them who had never worked for them before and had been invited to come over there to get work, and putting them into this boat under those conditions, crossing the Hudson River in the dark in a wooden boat, and the river full of ice. 6007 6008

The Court: Do I understand you correctly, your contention is that if they had had another man——

Mr. Axtell: They could have controlled it.

The Court: They could have controlled the number of men aboard? One man couldn't have done it, but you think if they had another man he could? You are not urging they should have had another man to help navigate the craft? 6009

Mr. Axtell: If they were going to carry that many people on that boat they needed another man, certainly, but the question of having another man is relegated to unimportance from the fact that they admit that they permitted him to carry 86, which is about all they could get into her. Mr. Barrett said that in his test they could

6010 get 97 men in. He said, "I got 97 men jammed in, and if you could get any more in, I would like to see you do it." That was when her cabin was off.

Now, if they had 86 men, and we have produced legal proof to prove that, there is no escape from it, that is the full number of life preservers on that boat, and that is enough to defeat the petition for limitation. If there was an additional overloading, additional over the number of life preservers, that does not excuse them if it was just a few more. It would be

6011 very difficult to show there was overloading on this occasion, on this morning in question, without the manager of the plant knowing of it, or any responsible officer knowing it or having reason to know it. However, it is an academic question of what the effect would be on your judgment if they had had 120 men on the boat. I am assuming that they had around 87 men on the boat, and we contend that that was a large enough number to be considered overcrowded, and that the officers of

6012 the company knew it, Mr. Stover knew it, and gave his consent to it. Mr. Stover and Mr. Aldrich both testified that they authorized the captain to carry 86 men because there were 86 life preservers; that is undisputed.

I would say, however, as a matter of academic concern, that in view of the fact that they made no provision to prevent men crowding on, that they had nobody there to help the captain to prevent others

from jumping on the boat, and that that 6013
practice was tolerated with their knowledge, and continued knowledge, it brought it within their knowledge to such an extent that they could not claim privity. There was an utter disregard of their duty to keep the load within the capacity of the boat to carry.

Mr. Stover testified on page 631: "The only emergency was you needed the men, isn't that it, when they were brought? A. Yes, sir.

"Q. And even if the captain brought 6014
over 82 instead of 75, he would have done so with your full approval and authority because you had given that many life preservers to the boat, recognizing the carriage of that many passengers, is that right? A. Yes, sir."

He cannot escape from that, and we have not proven any more than 87. But if your Honor wants to infer that there were more than 87, and finds as a fact that there was, then we can consider the question whether that additional load of over 87 was the proximate cause of the disaster. I say it 6015
would be very difficult for the Court to find that the additional 5 or 6 men that might have been on there, or even 10, were the proximate cause of this disaster. The boat was overloaded with 87; the mere fact that she was more overloaded with 93 doesn't excuse them in view of the fact that they made utterly no provision to prevent overloading.

Now, they advertised on the 17th, 18th,

6016 19th and 20th for people to come to that dock to meet this boat to get work at 48 cents an hour, people they had never seen. They had engaged men on Saturday and on Sunday, and they had gone over on Sunday and they were told to come back Monday morning, some 44 of them. They had, in addition, their regular employees, of whom there were 126 living in New York, to ride on this boat. So there was 160 or 180 men to be there, and were there that morning on the dock to ride over on that
6017 boat. She couldn't begin to carry them all over, she would do well to carry half of them, and she did carry about half of them.

This company has been so derelict in its duty, due to ignorance, utter ignorance, that it cannot possibly be excused. It would be, in my opinion, one of the greatest injustices of the age if this petition were granted.

Your Honor has been on the bench longer than I have been practicing law, and you will bring to this case, of course, an understanding of the law and a desire to do
6018 justice and a capacity to do it that would be much greater than mine if I were in your place, especially at this time. But I haven't any doubt that from reading the evidence, if you think it is necessary to do so to reach a conclusion, that you will find the petition should be denied, first of all, upon the merits, assuming that the Statute applies. I think you will have grave doubt whether the Statute would

apply or ought to apply to this kind of a vessel. 6019

I want to reserve a couple of minutes to answer Mr. Englar.

Mr. Englar: I shall not attempt to discuss the number of issues of fact which have been raised here, but will discuss those in my brief.

Just a word about the point made by the first counsel for the claimants, which I think really goes to the root of this case. Counsel said that the testimony of Mr. Charlton and of these other experts was outweighed by the mute testimony of what happened. 6020 Of course, that is the claimants' case, no matter what men might have thought beforehand, no matter what the judgment of competent men might be on certain facts; if something goes wrong, someone is drowned, why, of course, they are wrong. I submit that is not the angle from which to approach this or any similar case. We must deal with what measure of responsibility and skill and knowledge we were chargeable with before it happened, because no matter how well regulated any 6021 concern may be, it does have its accidents, and sometimes they are very unfortunate. Now, my friend, the first speaker, sort of invoked the protection of Deity for legislators and courts who enforced this Act in cases of this kind, and the last speaker rather suggested it, it seemed to me. Of course, this is an unpleasant case for everybody that has anything to do with it, but I am not going to make any appeals either

6022 to the Court or to higher powers on sentimental grounds. I know the Court will do its duty as it sees it, no matter which way the decision may go.

It was suggested that our figures were wrong as to space because we did not leave all the exits clear. Well, as Mr. Barrett pointed out, what is the use of leaving space clear if you cannot use it when it is necessary? What is the use of keeping a lot of space clear for use in emergencies, and then in an emergency not letting you use it? That is the real

6023 basis of our figures.

Now, Mr. Axtell pointed out that the Hudson River was closed last year or the year before in November. Of course, that is often so, often you have ice up at Albany a month or two months before you have it here. You often have it there all winter, and do not have any here. Nobody can tell when it will come down, and whether the ice will come down at all. And nobody can tell if it does come down one day, and flows back with the tide,

6024 whether it will come down again the next day or not.

My friends have spoken of ice going 15 miles with the tide up and down the river. Now, I do not think it really goes that far, but if it did, if it went up with the flood 15 miles, no one can tell whether, with the ebb, it will come back or not; it is pure speculation.

Now, as to the weather conditions, there was no day in December prior to this ac-

cident when the minimum temperature was above freezing. And my friend's reference to very cold weather is not relevant at all, because it is not very cold weather that brings ice down to this part of the river, and the record shows that for I think three days before this occurrence there was very cold weather, and as a number of witnesses explained, as a rule under those circumstances ice will freeze along the shore and not come down. 6025

Now, as I have already pointed out, this ice would be discovered on the first trip, when the boat wasn't carrying any men, and nobody would be in danger except the captain himself, which is a risk he might very well take with a light boat going out there, and observing the river to see if it was clear, and if it was clear, then there was no danger in his bringing men back. 6026

Now, your Honor asked a question about an extra man. The evidence on that was very clear. There is a standing order for Capt. Rohweder to have an extra man whenever he wanted him. Of course, during the day time trips, your Honor, when everybody had a seat, there was no occassion for him to take an extra man, as far as the passengers were concerned, and that would be true on many morning trips. He didn't have any considerable number of passengers. But further than that the evidence shows very clearly, I think, that all this extra man was wanted for was to handle his lines. There were 6027

6028 several men who operated the boat who said that, and it appears from the evidence of Capt. Rohweder himself, and of other witnesses, I cannot state who they are at the moment, that there were certain regular employees who had been in the employ of the company for a long while, who did that work for them.

This man Roberts who on this occasion was known to have been standing up in the pilothouse with Capt. Rohweder, Capt. Rohweder preferred to have him assist him, that is his own testimony.

6029 The Court: But suppose something had happened to his motive power, what would he have done with a launch full of men out there in the river?

Mr. Englar: But he had this man Roberts beside him, who was just as capable with the engine as the captain.

The Court: On some occasions.

Mr. Englar: On this occasion, on this morning in question. The testimony is that this man Roberts, about whom there has been a good deal of testimony, he

6030 was one of the men recognized as a close friend of Capt. Rohweder, he was a chauffeur in the plant, and Capt. Rohweder testified, and that is confirmed by other witnesses, that Roberts was one of the men he liked to have help him with the boat. He simply preferred to have that man to some others that they gave him in the plant. I do not think there is any harm in letting Mr. Rohweder pick out his own mate, so to speak, to get the sort of man he wants.

Now, one other thing, there is one other point that I will mention. It was such a flagrant misstatement of fact that I am sure it was unintentional, but it is very striking. Mr. Axtell said there were 132 regular men to come on this trip. 6031

Mr. Axtell: 126 living in New York.

Mr. Englar: Yes, but they did not all come on this trip. They were divided into three different shifts, and no one suggested in the record any such number of men were taken on this trip.

There are a lot of questions of fact that need to be discussed, but I do not think it is worth while to do it now. I will cover them in my brief. 6032

Mr. Axtell: May I reply?

The Court: You may have two minutes to reply.

Mr. Axtell: On this compensation business the Court of Appeals in this County in the case of *Tallon* v. *Interborough*, said on the question: "The cardinal underlying fact is that Tallon's employment did not actually begin until he reported for work at 177th Street and Third Avennue." 6033

This man was a passenger on the subway who had a free pass to ride on the subway to and from his work. It is well-settled law that the emplyoment did not start until they had arrived at the plant in New Jersey.

As to Roberts, this man wasn't paid for working on the boat; he was just a passenger and he happened to be there that morning. And as to the people on that boat,

6034 there were 126 regular employees who might have been divided in two or three shifts, some 60 in the first shift, as I recall, and 44 extra men, and God knows how many others looking for jobs.

As to men sitting in the exits, it certainly is a hazard to have men sitting in the exits. Those men who were down in the bottom with their feet cold with water up to their knees would not hesitate about jumping overboard, but those fellows sitting high and dry in the exits would hesitate and did hesitate and interfere with
6035 the rest of them getting out.

As to Lang's affidavit, Lang testified he carried 100, that he counted 93. It is in his affidavit and in his testimony. And Captain—what is his name, Marty Dinkle, he finally admitted, when his affidavit was brought forward and presented to him, he finally admitted that he had carried from 90 to 100 men on many trips, and the company knew about it.

Mr. Jayne: May I reply?

The Court: I will give you one minute.

6036 Mr. Jayne: I do not want to be put in the same position your Honor spoke of before, of having the last word. Roberts was my client, and I noticed the evidence particularly about him. In the examination of Capt. Rohweder he was asked if he had any authority to ask Mr. Roberts to help him, and he said no, and he was asked if Mr. Roberts was employed to do that, and he said no.

There was one cardinal fact due to the 6037
shortness of the time that I could not bring out before, and that is about that cut on the starboard side of the boat. With all due respect to Mr. Englar saying my mute bodies are no evidence, I say that that cut on the boat is the same kind of evidence, it is quite good enough for me to urge on this Court. That cut on the bow of this boat showed that this boat was down by the bow when the cut was made, and it seemed conclusive it was made by ice. When it comes to the question of proving 6038
her seaworthiness, as to her condition before this boat started on this trip, we are in their hands, because the proof must largely come from their plant, and their employees; but that proof that comes from the boat, that is on the boat where the boat is cut, then you have the boat speaking, and the boat cannot consider whether the testimony it testifies to in that way is helpful or harmful. And that angle of that cut shows the cut, the boat, when it was made, was down by the bow.

Just a last word. Mr. Englar grieves 6039
with me because I referred, appealed to God, or because I prayed. Well, I have often heard it said that men with sufficient money did not have to pray. It reminds me of the story about Marie Antoinette——

The Court: Your time is up.

Mr. Jayne: When the plea was made to her by the poor of Paris——

The Court: Time is up.

6040 Mr. Jayne: That they had no bread, she replied: "If you have not got bread, eat cake."

The Court: Time is up. Of course, I realize that this is an extremely important case. I am going to give it my careful consideration. I wish to say that I think the case on both sides has been very fairly and very fully tried. Counsel to their utmost extent have lent their assistance to the Court.

I request, however, that they file briefs
6041 within ten days, exchange briefs if you wish, so that I may be enabled to render an early decision.

6042

Testimony Before Commissioner.

6043

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

The petition of SPENCER KELLOGG & SONS, INC., as owner of the Motorboat "Linseed King", her engines, etc., for limitation of liability, civil and maritime.

6044

First hearing, held May 15th, 1928 at 10:30 A. M., under interlocutory decree granted in the above entitled matter dated March 26th, 1928, under which interlocutory decree, among other things, the matter was referred to Myer Nussbaum, Commissioner, to take further proof that may be offered as to the amount and validity, of all claims filed herein, and the applicability or inapplicability thereto of the New Jersey Workmen's Compensation Law, and to report thereon to this Court, of the evidence taken before him together with his opinion, with all convenient speed. 6045

The Commissioner has taken oath.

APPEARANCES:

The petitioner herein is represented by BIGHAM, ENGLAR & JONES, by Mr. Hagen, Mr. Wright and Mr. Millett.

The Claimants are represented by SILAS B. AXTELL, by Miss Elizabeth Robinson.

6046 MARSH, SPENCER & MARSH, by Mr. C. C. Marsh, attorneys for Emma Gonzales Navas, Administratrix of Marcus Gonzales Navas.

IT IS HEREBY STIPULATED, that all the records, proceedings and pleadings in the limitation proceedings are made a part of this record, as to all claims, excepting that if there are any exhibits to be used they be interposed specifically in this proceeding.

ADINA PUSEY, Claimant, being duly sworn, tes-
6047 tified as follows:

Direct examination by Miss Robinson:

Q. Mrs. Pusey, you are the widow of Aria Pusey? A. Yes.

Q. When were you married? A. 1916.

Q. Where? A. British West Indies.

Q. Were there any children born of the marriage? A. Yes.

Q. How many? A. Five.

Q. State their names and ages? A. Edward 11; Monica 9; Marona 7; Robert 4; Leonard 1 year
6048 and 9 months.

Q. Were you living with your husband at the time of his death, in December, 1926? A. Yes.

Q. When did you last see him? A. About ten minutes to six.

Q. What day? A. Twentieth of December, 1926.

Q. Where was he going at the time? A. He was going to work for Spencer Kellogg.

Mr. Hagen: I object unless it is specifically stated where he was going.

Q. Was his body recovered? A. Yes. I got this from the undertaker. 6049

(The witness produced a brass badge.)

Q. You took that from his body? A. Yes.

(Badge numbered 5391 of Spencer Kellogg & Sons Co. Inc., was offered in evidence, received and marked Exhibit A.)

Q. You were appointed Administratrix of your husband's estate? A. Yes. 6050

Miss Robinson: I offer the Letters of Administration issued to Adina Victoria Pusey by the Surrogate's Court, New York County.

(Offered in evidence, received and marked Exhibit B.)

Q. Had your husband been regularly employed? A. Yes for about six months.

Q. What were his average earnings? A. Thirty-three sixty. 6051

By the Commissioner:

Q. For how long? A. Per week.

By Miss Robinson:

Q. How long had he been employed for Spencer Kellogg? A. For about six months before I had my last baby. He was born in August.

Q. Did you pay for your husband's funeral expenses? A. Yes.

6052 Q. How much? A. About three hundred dollars.

Q. Your husband was living with you at the time? A. Yes.

Q. You and the children? A. Yes.

Q. Did he contribute to your support and the support of the children? A. Yes.

Q. How much did he give you? A. He gave me the thirty-three and I gave him back five dollars for his pocket sometimes.

Q. Did he have any other source of income other than being employed by Spencer Kellogg, or whatever he earned by work? A. Just insur-
6053 ance—$500.00.

By the Commissioner:

Q. Did he have any money in any other way? A. No.

By Miss Robinson:

Q. Have you any means of support yourself? A. No. The City gives me $56.00 per month.

Q. Is that a charitable contribution? A. No, from the Board of Child Welfare.

6054 Q. How old was your husband at the time of his death? A. Thirty-five.

Q. How old are you? A. Thirty-five now.

Q. Are you able to do any work? A. No, not just now.

Q. Your time is taken up caring for the children? A. Yes.

Q. Did you identify the body? A. Yes, myself and my brother.

Q. Was it taken out of the cabin? A. Yes, he was found in the boat.

Q. Where did you live at the time? A. 145 6055
West 145th Street, New York City.

Cross examination by Mr. Hagen:

Q. Have you any marriage certificate? A. Yes, I have it home.

Q. That was down in the West Indies? A. Yes.

Q. Do you know what kind of work your husband did for Spencer Kellogg? A. He was a press man.

Q. He worked in New Jersey? A. Yes.

Q. Do you know of any writing or any paper which your husband signed saying he would not 6056
be bound by the Workmen's Compensation Law? A. No.

Miss Robinson: I object to the question as being incompetent, irrelevant and immaterial.

The Commissioner: I will take the evidence and take the matter under advisement with the right to make a motion to strike it out.

By Mr. Hagen:

6057

Q. Do you know whether or not he signed any written contract of employment, or did he just go over and get a job? A. I really don't know.

ANGELINA CORRIETTE, Claimant, being duly sworn, testified as follows:

Direct examination by Miss Robinson:

Q. You are the sister of Balfour Corriette? A. Yes.

6058 Q. Was he married? A. No, single.

Q. Was he living with you at the time? A. Yes.

Q. Whom did he leave surviving? A. I, my mother, father, two sisters and one brother.

Q. Where do they live? A. Rosa Dominico, British West Indies.

Q. When did you last see him? A. On Monday before he died.

Q. You mean the morning he died? A. Yes.

Q. Did he say where he was going? A. He was going to work.

By Mr. Hagen:

6059 Q. Do you know he was dead? A. Yes.

By Miss Robinson:

Q. Did Balfour Corriette lose his life on the "Linseed King"? A. Yes.

Q. Was his body recovered? A. Yes.

Q. Where was it taken out of? A. The Morgue.

Q. Did you identify his body? A. Yes, at the City Morgue.

Q. Did you pay his funeral expenses? A. No, I am still paying for it.

6060 Q. How much have you paid on account? A. Twenty-five dollars and I pay by the week or month what I can, until I get them paid.

Q. You were appointed Administratrix of your brother's estate? A. Yes.

Miss Robinson: I offer in evidence the Letters of Administration issued to Angelina Corriette, as Administratrix of the Estate of Balfour Corriette.

(Offered in evidence, marked Exhibit E.) 6001

Mr. Hagen: I desire to object to the entry of the Letters of Administration issued to Angelina Corriette on the ground that they may not be issued to the proper person.

Miss Robinson: Whether the Letters are or are not issued to the proper person, only the person entitled to recover can recover, under the law, and when the time comes the proper person will recover.

The Commissioner: I will allow the Letters of Administration to be entered, subject to the objections of Mr. Hagen and the statement of Miss Robinson. 6002

By Miss Robinson:

Q. Had he been regularly employed? A. Yes.

Q. What were his average earnings, during his lifetime? A. Thirty dollars and twenty-one or some odd cents.

Q. Had he been working for Spencer Kellogg? A. Yes.

Q. How long? A. Three or four months at that time. 6003

Q. Did he live with you at the time of the accident? A. Yes.

Q. Did he contribute to your support? A. Yes, he always supported me.

Q. How much did he give you? A. Sixteen dollars a week.

Q. Did he have any other means of income besides what he earned? A. Nothing at all.

Q. Have you any source of income? A. No, I have none.

MARIO ORTIZ, Claimant, being duly sworn,
6064 testified as follows:

Direct examination by Miss Robinson:

Q. You are the brother of Eladio Ortiz? A. Yes.

Q. Was he married or single? A. Single.

Q. Whom did he leave surviving? A. My mother, my sister and me.

Q. Was he living with you, your mother and sister, prior to and at the time of his death? A. Yes.

Q. How old is your mother? A. Fifty-five
6065 years.

Q. How old is your sister? A. Sixteen years.

Q. How old was your brother at the time of his death? A. Twenty-five years.

Q. When did you last see him? A. December 20th, 1926.

Q. About what time? A. Around six o'clock in the morning.

Q. Did he state where he was going when he left the house? A. To work.

Mr. Hagen: I object on the ground that
6066 the testimony given is based on hearsay and move to strike it out.

Miss Robinson: Mr. Commissioner, it has been held that when a person expresses an intention of going to a certain place and a disaster occurs, it is reasonable to assume that that person perished in the disaster.

The Commissioner: I will allow the evidence to go in.

By Miss Robinson:

Q. Where was he working? A. Spencer Kellogg.

Q. Did he say where he was going? A. To work.

Q. As a matter of fact you worked there yourself, didn't you? A. Yes.

Q. You weren't working on the day of the disaster? A. No, I didn't go over.

Q. Your brother went? A. Yes.

Q. Did he leave at the same time that he usually left on the boat? A. Yes, at the same time.

Q. Did you make inquiry at the Morgue and various places? A. To the Harlem Hospital, Knickerbocker and to all hospitals.

Q. His body was not recovered? A. No.

Q. Was he regularly employed prior to the disaster? A. Yes he was working about seven months in the same place.

Q. At Spencer Kellogg? A. Yes.

Q. Have you received any money from Spencer Kellogg for his wages? A. No, I did not receive his wages as yet.

Q. Were you there to make inquiry? A. I went but they said they would send a check but never sent it.

Q. Was it for back wages due him?

Mr. Hagen: I object on the ground that it is immaterial, and irrelevant.

The Commissioner: I believe it is material. Objection overruled.

By Miss Robinson:

Q. Was the money you went to inquire about for back wages due him, for the last week he

6070 worked there? A. They told me they send it home but I never get check or any money.

Q. You were appointed administrator of your brother's estate? A. Yes.

Miss Robinson: I offer the letters of Administration issued to Mario Ortiz on the estate of Eladio Ortiz.

Mr. Hagen: I object to the introduction of the letters of administration unless it is shown that at the time the claim was filed, Mario Ortiz was administrator of the

6071 estate.

The Commissioner: I will allow the letters to go in, subject to the objection of Mr. Hagen.

(Offered in evidence and marked Exhibit G.)

By Miss Robinson:

Q. What were his average earnings? A. Twenty-eight eighty.

Q. Had he been working regularly prior to, before he worked at Spencer Kellogg? A. Yes.

6072 Q. During the time he was able to work? A. Yes.

Q. At the time of his death did he leave any property? A. No.

Q. Had he any source of income outside of what he earned? A. No.

Q. Is your mother able to work? A. No, she is too old.

Q. What did he work at, at Spencer Kellogg? A. He worked on the barrels and drums, in the cooper shop.

Second hearing, held pursuant to adjournment, on the 16th day of May, 1928, at 10:00 A. M. 6073

Same appearances.

LAURA F. RAWLINS, Claimant, being duly sworn, testified as follows:

Direct examination by Miss Robinson:

Q. You are the widow of Charles Clifford Rawlins? A. Yes.

Q. When were you married? A. Fourteenth of November, 1909. 6074

Q. Were there any children born of the marriage? A. One.

Q. How old is the child? A. Five and one-half when his father died.

Q. How old are you? A. Thirty-five.

Q. How old was your husband? A. Forty-four.

Q. Were you living together with your husband at the time? A. No.

Q. You were separated? A. No.

Q. Just weren't living together? A. Yes.

Q. Did he contribute to your support? A. Yes. 6075

Q. And the support of your child? A. Yes.

Q. How much did he give you? A. Twenty to twenty-five dollars.

Q. Per week? A. Yes.

Q. When did you last see him? A. A little time before he was drowned, but not the morning before he was drowned.

Q. Was his body recovered? A. No.

Q. You were appointed administratrix of your husband's estate? A. Yes.

6076 Miss Robinson: I offer in evidence the letters of administration issued to Laura F. Rawlins on the estate of Charles Clifford Rawlins.

Mr. Hagen: I offer the same objection to the entering of these letters as before.

The Commissioner: Same ruling.

(Offered in evidence, marked Exhibit H.)

By Miss Robinson:

Q. Did your husband have any source of income outside of what he earned? A. No.

6077 Q. Do you know whether he was regularly employed? A. Yes.

Q. Prior to December 20th? A. Yes.

Q. What were his average earnings? A. About thirty three dollars a week.

Q. Have you any means of support? A. No.

Q. How are you being maintained now? A. By the Welfare organization.

Q. That is only charity? A. Yes.

Q. Is that temporary aid? A. Yes until the case is settled.

6078 Miss Robinson: I ask that the Commissioner take Judicial notice of that part of the record in the Limitation Proceedings of someone who identified the body as having been on the boat. I offer that part of the record in evidence, volume 3, pages 1030 to 1050, in which part of the record shows that one Don A. Barker a survivor of the "Linseed King" disaster, testified that one Charles Rawlins was on the boat, on the morning of December 20th, 1926.

(Offered in evidence and received.)

Cross examination by Mr. Hagen: 6079

Q. Mrs. Rawlins, do you know your husband's badge number? A. No.

Q. You know he was working for Spencer Kellogg? A. Yes, I have many witnesses to prove it.

Q. Had you been living with your husband before he was killed? A. Not at the time he was killed.

Q. Had you been living with him for two or three years before? A. Yes.

Q. When did you separate from your husband? A. I couldn't tell you the time, he went to the country to work. 6080

Q. What did your husband contribute to your support? A. He gave me about twelve dollars per week, paid rent and maintained us with clothes.

Q. Isn't there a Court order ordering your husband to pay seven dollars per week? A. He paid the rent and clothed the child.

Q. Do you mean to say he paid more than seven dollars per week? A. Yes, he gave the child clothes and gave me other money.

6081

WILLIAM R. TAYLOR, a witness called on behalf of the petitioner in the Rawlins case, having been duly sworn, testified as follows.

Direct examination by Mr. Hagen:

Q. Where do you work now? A. For Spencer Kellogg and Company.

6082 Q. Are you in any way related to Clifford Rawlins? A. Yes, sir.

Q. What is your relationship to him? A. Cousin.

Q. Were you related to Laura Rawlins at all? A. Yes.

Q. How were you related to her? A. Clifford is by the mother and Laura is by the father.

Q. You are cousins in a certain degree on both sides? A. Yes.

Q. Where do you live? A. 65 West 140th Street.

6083 Q. Were you on the "Linseed King" the day she sank? A. I was over at Spencer Kellogg. I was supposed to check the men coming over that morning.

Q. After the accident did you go down to the Morgue or any other place looking? A. No, after the accident I took a boat, a little boat and went across between 2:00 and 3:00 and went across to the 100th Street station.

Q. Was it a row boat? A. No a motor boat at Spencer Kellogg and took it and went across and when I got to the 100th Street station I found four dead lying there. The first presented

6084 to us was Clifford Rawlins and I said "Oh God, look at Clifford here." The officer there said that was not Clifford Rawlins that was Bassett. I said "No, this is Clifford Rawlins." He said No, his wife has been here and they found a card in his pocket and identified him." I said "If this isn't Clifford Rawlins, I will eat it up, I bet they don't find any other Clifford Rawlins." He said, "His wife has been here and identified him."

Q. As what? A. As Bassett. I said I know it is Clifford Rawlins, my cousin. After we argued

and argued, I said "Well you said it isn't but I know it is and reported same to his wife. We searched every other station, all around, there was no other Clifford Rawlins found up to this present minute, in all the deads that was found, we never found any other.

Q. When you said "his wife," you meant Laura Rawlins? A. Yes.

Q. When the Police Officer told you "his wife," he meant Bassett's wife? A. Bassett's wife identified him as Bassett.

Q. Did you know Clifford Rawlins before he came to New York or did you live with him in Philadelphia at any time? A. We worked together for years, I was a member of the Compressed Air and Foundation Workers Union. I took him to Philadelphia and had him join the union. We worked there for years. We put down the bridge across the Camden River. 3086

Q. And you knew him here in New York? A. Yes.

Q. You saw him quite a little? A. Yes, he lived 504 Lenox Avenue.

Q. Tell us something about his home life, his private life? A. The wrangling wasn't much, it was when he got down there—— 3087

Q. Down where? A. In Philadelphia where we were working there was a lady there that used to board both of us and he got kind of infatuated over the lady. When it was time to come home he wouldn't come. His wife heard about it and she wrote and asked me about it. I persuaded Clifford to come home. I had my wife home and I came but he wouldn't come. When the job was completed I came home, my sister died, I was in charge of the gang and had to leave some one in

6088 charge of my shift until I returned. Clifford wouldn't come, he stayed there and used to send to his wife, support.

Q. Do you know that of your own accord? A. Yes, he used to support her. I have mailed many a registered letter myself.

Q. When was that, what year? A. I cannot readily remember what year it was now, it was a good while since we put the Bridge across the Camden.

Q. It was at the time the Camden Bridge was built? A. Yes.

6089 Q. Would you say about seven years was right? A. Something like that I cannot say exactly.

Q. Do you know when Clifford came back to New York? A. He was staying there for quite a while, doing another job when I came back.

Q. You don't know when it was? A. No.

Cross examination by Miss Robinson:

Q. Will you describe Clifford Rawlins for us? A. He is a big man about six feet, very big, large tall fellow.

Q. Was the body pretty well mangled up? A.

6090 Yes. He was a well built man.

Q. How did the body look? A. Just as natural as he used to be. Four was lying there, three white men and himself. He was the largest of them all.

Q. What were you and Clifford Rawlins doing in Philadelphia? A. We was working for the Union.

Q. What were you doing? A. I was in charge of a gang for the casing under the River.

Q. How long was Clifford doing that work?

A. I made him join the Union, I made him a member of the Union. 6091

Q. How long ago was that? A. He belongs to it about three or four months before that took place. I made him join the Union in Philadelphia.

Q. Do you know how long he worked on that job? A. No, I left him there.

Q. How long before you left him had he been doing that kind of work? A. After my sister died I came home.

Q. When you and he were together how long were you and he working there? A. From the commencement of the job until I left. 6092

Q. How many months about? A. Between two or three months.

Q. Do you know what he was earning there? A. We got a big pay.

Q. What did he get? A. We was getting around eight or nine dollars a day.

Q. Was he doing the same as you were doing? A. Yes.

By Mr. Hagen:

Q. I thought you were the foreman? A. I was but we get the same pay. I belong to that Union now, number 63. 6093

By Miss Robinson:

Q. Did you at any time work with him on any other jobs? A. Sure we worked here in Long Island, in Staten Island, put down that casing there too.

Q. How long did you work there? A. It didn't last very long, about a month.

6094 Q. What were you getting there? A. I made, some days we made twelve dollars, that was a very technical job, we were making twelve dollars and eleven fifty.

Q. Was Rawlins doing the same as you were? A. Yes.

By the Commissioner:

Q. Getting the same pay? A. Yes, we all got the same pay.

By Miss Robinson:

6095 Q. Do you know of any other jobs he was working on with you? A. He was working for the same Union, we got one scale of wages, ten dollars. We were working at twelve dollars before we got a raise in the scale of wages, that's the smallest wages I worked for since in New York. The doctor wouldn't pass me now, they won't pass me for the air because the doctor said I have high blood pressure.

By Mr. Hagen:

6096 Q. Do you happen to know how it was Clifford went to Spencer Kellogg to work? A. Yes, we didn't have any job at the Union, we were slow. During the time we were slow I didn't have no job and went there and got a job and I got him a job there. He worked there three months before the accident happened.

By Miss Robinson:

Q. Prior to that he had been working on the Compressed Air? A. Yes and had other jobs, the

Union sent us out. I got sent to Oswego, New York, after on a job on Lake Ontario, that was about December 23rd, 1923. 6097

Q. Was Rawlins with you at the time? A. No, he wasn't on that job, only certain of us were there.

NELLIE COYLE, claimant, being duly sworn, testified as follows:

Direct examination by Miss Robinson:

Q. Are you a sister of Thomas Coyle? A. Yes. 6098

Q. Was your brother married or single? A. Single.

Q. With whom did he live up to the 20th of December, 1926? A. With me.

Q. What was your brother's age? A. Thirty-seven.

Q. When did you last see him? A. December 20th, 1926.

Q. About what time? A. Six o'clock in the morning.

Q. Was he employed by Spencer Kellogg & Sons? A. Previous to the accident—yes. 6099

Q. For how long? A. About a year.

Q. Did he leave at six o'clock that morning? A. The same time as usual, yes.

Q. Was his body recovered? A. Yes.

Q. Where did you recover the body? A. It was picked up at 96th Street and identified by the Spencer Kellogg people and taken to an undertaker at Fort Lee and he notified me.

LEOLA TURNER, claimant, being duly sworn,
6100 testified as follows:

Direct examination by Miss Robinson:

Q. You are the widow of John Turner? A. Yes.

Q. Where were you married? A. In 1920.

Q. Where? A. Elizabeth, North Carolina.

Q. Were there any children born of the marriage? A. One. She is four years old.

Q. How old was she at the time your husband died? A. Two years and eleven months.

6101 Q. How old are you? A. Twenty-seven.

Q. How old was your husband? A. Thirty-two.

Q. When did you last see him? A. Five o'clock, December 20th, 1926.

Q. Had he been employed by Spencer Kellogg? A. He was employed for about seven months.

Q. Did he leave at the usual time he generally left to go every morning? A. Every morning he would leave at five o'clock.

Q. Was his body recovered? A. It was not.

Q. Were you appointed Administratrix of your husband's Estate? A. Yes.

6102

Miss Robinson: I offer the Letters of Administration issued to Leola Turner, on the Estate of John Turner.

(Offered in evidence, received and marked Exhibit L.)

Q. Had your husband been living with you up to the time of the accident? A. He never stayed away from me one night.

Q. What were his average earnings? A. Thirty- 6103
three twelve.

Q. Then prior to the time he worked for Spencer Kellogg? A. That is what they paid him, thirty-three twelve.

Q. Before he worked there? A. He had his own business, shoe repairer.

Q. What did he earn at that work? A. About twenty-five.

Q. For about a year had he been earning $33.12? A. Yes.

Q. Did he leave any property? A. No.

6104

LENA BURNS, claimant, being duly sworn, testified as follows:

Direct examination by Miss Robinson:

Q. You are the widow of Charles Burns? A. Yes.

Q. When were you married? A. In New York.

Q. When? A. Second of July, 1921.

Q. Were there any children born of the marriage? A. Yes, four.

Q. Give their names and their ages? A. Hazel 6105
6; Jean 4; Ray 2½, Charles 14 months.

Q. Charles was born two months after your husband's death? A. Yes.

Q. How old are you? A. Thirty.

Q. How old was your husband? A. Thirty when he died.

Q. When did you last see him? A. December 20th, 1926.

Q. What time? A. Six o'clock in the morning.

Q. He was going to work? A. Yes.

6106 Q. Was that the same time as usual? A. Yes, he took his lunch and everything.

Q. Took his lunch with him? A. Yes.

Q. Had he been employed by Spencer Kellogg? A. Yes, six months.

Q. What was he earning there at the time? A. $29.76.

Q. How much did he contribute to your support? A. That wasn't enough although he gave it all to me.

Q. He was living with you and the children? A. Yes.

6107 Q. Was his body recovered? A. No.

Q. Were you appointed Administratrix of your husband's Estate? A. Yes.

Miss Robinson: I offer the Letters of Administration issued to Lena Burns, on the Estate of Charles Burns.

(Offered in evidence, received and marked Exhibit M.)

Q. Did he leave any property? A. No.

Q. Any other source of income? A. No.

6108 Q. How are you being maintained now? A. By the City.

Q. By what? A. Child Welfare Board.

Q. All your time is taken up with the children? A. I cannot do anything. I am so poor I live on the top floor—it is cheaper.

Miss Robinson: In connection with the loss of Charles Burns, I offer in evidence, so much of the record in the limitation proceedings, pertaining to the identification of

Charles Burns on the boat on the morning of the disaster, pages 1402 to 1413, inclusive, Volume 3. 6109

(Offered in evidence and received.)

Cross examination by Mr. Hagen:

Q. You were married in New York? A. Yes, in St. Phillip's Church.

Q. Have you your marriage certificate? A. I have it but not here.

Q. Your husband was employed by Spencer Kellogg? A. Yes. 6110

Q. Mrs. Burns how much did you say your husband gave you every week? A. What he earned.

Q. He had been working for Spencer Kellogg for sometime past? A. Yes.

MARIE MARQUES, claimant, being duly sworn, testified as follows:

Direct examination by Miss Robinson:

Q. You are the widow of Frank Marques? A. Yes. 6111

Q. When were you married? A. April 24th, 1926.

Q. In New York? A. New Jersey.

Q. Were there any children born of the marriage? A. No.

Q. How old are you? A. At present I am twenty-three.

Q. How old was your husband? A. Thirty.

Q. Was your husband living together with you up to December 20th, 1926? A. Yes.

6112 Q. When was the last time you saw him alive? A. The morning of December 20th.

Q. The morning of the accident? A. Yes, I was looking out the window and it was snowing and I made him put on his top-coat and rubbers.

Q. Where was he working? A. At Spencer Kellogg, at Edgewater.

Q. How long had he been working there? A. Seven months prior to the accident.

Q. Was his body recovered? A. Yes.

Q. Where? A. A. At the Morgue, 117 Montgomery Street.

6113 Q. After the accident? A. Yes.

Q. Do you know whether, was his body washed ashore? A. It was floating down to Pier 5——

Mr. Hagen: I object to the question as the witness does not know of her own knowledge.

A. I was told that by the detective.

The Commissioner: I will allow it.

By Miss Robinson:

6114 Q. Was his body on the boat? A. Yes.

Q. Have you a badge with you? A. Yes.

Q. It was taken from his body? A. Yes.

Miss Robinson: I offer in evidence badge 5357 of Spencer Kellogg & Sons Co. Inc.

(Offered in evidence, received and marked Exhibit C.)

DARNELLY BARKER, Claimant, being duly sworn, testified as follows: 6115

Direct examination by Mr. Seidel:

Q. Did you work for Spencer Kellogg before December 29th, 1926? A. I did.

Q. How long? A. About a month I guess it was.

Q. How much were you making? A. Twenty-nine and some cents, I don't remember.

Q. How much an hour? A. I think forty-eight cents an hour.

Q. What were you doing there? A. I was employed as long-shoreman. 6116

Q. You worked on the dock? A. Yes and when the boat came in I worked on the boat.

Q. After the boat sank on December 20th, 1926, tell what happened to you? A. After the boat sank I was in the river.

Q. But after that? A. I don't know what happened, I found my hand frozen.

Q. When did you become conscious again? A. In the Harlem Hospital, between nine and ten.

Q. Do you know what boat picked you up? A. I couldn't say.

Q How long were you in Harlem Hospital? A. Forty-eight hours. 6117

Q. Were you treated by the doctors at the hospital? A While I was there, yes.

Q. Describe what pain or injuries you suffered? A. My hands was frozen.

Q. Are your hands still scarred? A. Yes they are still scarred.

Mr. Seidel: Show them to the Commissioner.

(The witness exhibited both hands to the Commissioner.)

Q. Anything else? A. Yes, my right hand was burned, on finding.

Q. How long? A. For about a month in the hands.

Q. How long were your hands bandaged? A. Four weeks.

Q. How long did you have to stay home? A. Four weeks I was home.

Q. You weren't well enough to look for work until seven weeks after? A. No.

Q. Were you treated by a doctor? A. Yes, in Harlem Hospital.

Q. That is the only doctor you had? A. Yes.

By the Commissioner.

Q. What is the name of the doctor who treated you? A. I cannot remember the doctor's name.

Mr. Seidel: We will bring all the hospital records.

By the Commissioner:

Q. How old are you? A. Twenty-six.

Q. Have you a family? A. Yes.

Q. What does your family consist of? A. A wife and kid.

Q. How old is your wife? A. Twenty-three before she died.

Q. She is dead? A. Yes.

Q. How long? A. A month yesterday.

Q. How old is the child? A. Four years—a boy.

Cross-examination by Mr. Hagen:

Q. You had been working for Spencer Kellogg, had you not, up to the time of the accident? A. Yes.

Dorothy Barton—Testimony for Libelant.

Q. What was your job there, on the dock, and on the boat, when you loaded?

Q. You said something about your husband, those of the stevedore, you were not a stevedore were you? A. I was not.

Q. You were a long-shoreman? A. Yes, on the boat.

Q. What sort of work did you do? A. Cut the bags of the linseed.

Q. You opened bags of linseed? A. Yes.

Q. You cut them open and poured the seed out? A. Yes, and loaded the boats with cakes.

Q. You carried bags of cakes out to the loaders? A. Yes. 6182

Q. The [illegible] you did were whatever you were asked to [illegible] by men of Spencer Kellogg, any sort of job? A. I guess so.

Q. You received pay from Spencer Kellogg after the accident? A. I was over there once and they gave me some money, I can't remember how much.

Q. You received two weeks pay? A. Two weeks pay, I don't know about that.

Q. Don't you know? A. No.

Q. Do you want to deny that you received two weeks pay? A. I received it from the Spencer Kellogg once myself, it wasn't two weeks pay. I cannot remember how much, but not two weeks pay. 6183

Q Did you receive a check from Spencer Kellogg on January 18th, 1927 for seventeen dollars? A. That was the first money I received. That was my salary.

Q I show you a check, you received it, didn't you? That is your signature on the back? A. Yes, that is my signature.

6124 Q. Do you mean to say you received nothing before January 13th, 1927? A. Only the money I sent my wife for, the money I left there before the accident.

Q. In addition to this seventeen dollars, your wife went over and got additional money? A. She got the money I left there.

Q. Are you sure your wife didn't get money up to the 13th? A. I don't know, she bring me the money I left there.

By the Commissioner:

6125 Q. Do you mean money that was due you? A. Yes, it was due me.

By Mr. Hagen:

Q. Do you recall being asked to come over to Spencer Kellogg to be examined physically? A. No, I don't recall that.

Q. Do you deny that you were asked to do that? A. No.

Mr. Seidel: I object to the question. Was he examined?

6126 Mr. Hagen: I want to see how good his memory is, I am testing his recollection.

A. I was over to Spencer Kellogg, my lawyer sent me there. The doctor looked at my hands.

Q. When was that? A. I cannot remember the date. The hand was numb and had no feeling.

Q. Was that a week or two after the accident? A. I cannot remember. The lawyer sent me there, the doctor looked at me, that was the first time he saw me.

Q. Did you, at any time while you were working for Spencer Kellogg and since, sign any waiver or any paper to the effect that you would not be bound by the Workmen's Compensation Law? A. Never signed no paper. 6127

Q. Did Spencer Kellogg ever give you such a paper signed by them? A. Never.

Q. Did you ever make application, either before the New Jersey State Workmen's Compensation Bureau or the New York State Workmen's Compensation Bureau for compensation? A. Never.

Q. Did you ever receive anything in payment, as compensation under either the New York or New Jersey Workmen's Compensation Law? A. No. 6128

Q. Do you recall why this check for $17.00 was given you? A. I don't recall that.

Q. Do you think it was given to you in settlement of your claim under the Workmen's Compensation Law? A. I don't know, they didn't tell me, they said they would give me money, that was all.

Q. Where was the first place you worked after the accident? A. The place I am working now.

Q. Who is that for? A. Ludwig Kasal. 6129

Q. Where is their place of business? A. 43 East 57th Street.

Q. What sort of work do you do? A. Chauffeur.

Q. How long have you worked for them? A. Nearly a year now.

Q. Were you employed by any one else before that time? A. No, no one else.

Q. Give us, as nearly as you can, when you went to work for Kasal? A. Somewhere in Feb-

6130 ruary I cannot remember the date, in February sometime.

Q. February, 1928, or February, 1927? A. 1927.

Q. Have you any means of support other than your own personal labors? A. No other means.

Q. During the period from December 20th, 1926 to February, 1927, how were you being supported? A. By my wife.

Q. She was working? A. She was not working, no, she had some money.

Q. What were your wages at Spencer Kellogg?

6131 A. Twenty-nine and some cents, I don't remember how much—forty-eight cents for ten hours.

Q. How much an hour? A. Forty-eight cents.

Q. Forty-eight cents an hour for ten hours? A. Yes.

Mr. Hagen: I have been told it was twenty-eight eighty.

Q. What are your wages now? A. Thirty-five dollars.

Q. You have been receiving the same wages of thirty-five dollars since you went to work for

6132 that place? A. Yes.

Q. Did you have any doctor beside the one who treated you at the hospital? A. My brother brought me one doctor and he saw me once.

Q. How long was that after the accident? A. I think that was the next day after the accident my brother brought me a doctor to the hospital.

Q. Did you pay anything to the hospital? A. I did not.

Q. Did you pay anything to the doctor at the hospital? A. I didn't pay anything at the hospital.

Mr. Seidel: I object, there is no claim for that. 6133

By the Commissioner:

Q. When did you say you went to work for the present concern? Did you say about a year? A. A year and some months, I went there in February, 1927.

Q. Would you say about a year altogether? A. Yes, I guess so.

By Mr. Hagen: 6134

Q. You didn't go back to the hospital after you were discharged? A. Yes.

Q. How often? A. Twice a week.

KENNETH NORGROVE, claimant, being duly sworn, testified as follows:

Direct examination by Mr. Seidel:

Q. Where do you live? A. 217 West 127th Street.

Q. Are you married? A. Yes. 6135

Q. Living with your wife? A. Yes.

Q. How long have you been married? A. Three years now.

Q. How old are you? A. Twenty-nine.

Q. Did you work for Spencer Kellogg at Edgewater before December 20th, 1926? A. I did.

Q. How long did you work for them? A. About three or four weeks.

Q. What were you doing there? A. Unloading ships.

6136 Q. How much were you being paid? A. About twenty-nine and some cents.

Q. By the hour? A. Yes, forty-eight cents an hour.

Q. You were on the "Linseed King" on December 20th, 1926? A. Yes.

Q. Describe what happened to you after the boat sank? A. After the boat sank I was in the water about twenty-five or thirty minutes and caught on a piece of floating ice and it was there I was rescued.

Q. How long before you were rescued? A.
6137 The boat sank about twenty-five to seven, it was about fifteen or twenty minutes after seven I was rescued, I was one of the last myself and another fellow was picked up.

Q. Was the water cold? A. Yes.

Q. Was the weather cold? A. Yes.

Q. What was the name of the boat that rescued you? A. A boat by the name of "Buffalo"—a tug. I was picked up by a life-boat and put on board the "Buffalo."

Q. Were you conscious at the time you were picked up by the "Buffalo"? A. Yes.

Q. Were you suffering pain? A. Sure I did.

6138 Q. Describe the pain you were suffering? A. In my right side, pain in my side.

Q. Any other pain? A. One of my finger nails was knocked off, I guess somebody stepped on my nail.

Q. Were your clothes wet? A. Yes.

Q. Were they frozen? A. Yes, I left them on board on the "Buffalo."

Q. Where were you taken from there? A. 129th Street pier, and taken to the Harlem Hospital.

Q. When did you get there? A. About 11:00 o'clock and came out at 11:30 Wednesday. 6139

Q. You were there two days? A. Yes.

Q. Were you treated by the doctors there? A. Yes.

Q. Did you see any other physician? A. Yes, after I got out I was to see a doctor in 129th Street.

Q. How often? A. About three times. He gave me medicine—pills.

Q. How long before you were able to go back to work? A. About three weeks, I was home about three weeks. 6140

Q. Have you any children? A. Two.

Q. Do they live with you? A. No, they are in the West Indies.

Q. Children by a former marriage? A. Yes.

Q. Do you support them? A. Sure I do.

Q. Do you send money there? A. I do.

Q. How much about? A. Fifteen dollars a month.

Q. Are you working now? A. Yes in the New York Central, 42nd Street and 13th Avenue.

Q. What do you do there? A. Laborer, work on the dock.

6141

Cross examination by Mr. Hagen:

Q. Did you have to pay anything to the Harlem Hospital where you were taken after the accident? A. No.

Q. Did you pay any doctor's bill? A. After I came out I had a doctor.

Q. How often were you treated? A. Two or three times, he gave me medicine, some pills.

Q. Did you receive any money from Spencer Kellogg? A. Twenty-eight dollars.

6142 Q. After the accident you received $28.80? A. Yes.

Q. A week's pay? A. Yes.

Q. Did you get anything additional from Spencer Kellogg? A. All I got was $28.00. I never went there since.

Q. Did you ever go back for an examination to Spencer Kellogg? A. No I did not.

Q. Mr. Norgrove was there a man named P. Norgrove living at your address? A. That was me, they had my name wrong.

Q. That was the same person as you? A. Yes, that was me, that had my name wrong.

6143 Q. What was the name of the physician who treated you after you left the hospital? A. I cannot remember the name he had his office at 105 West 129th Street.

Q. A colored doctor? A. No, a white man—a German.

Q. A German doctor? A. Yes. I will get the name, I forgot the name, it was a funny name, I forget it now.

Mr. Seidel: Mr. Hagen, the name of that doctor is Dr. Owen.

6144

ANNA EBERLE, claimant, being duly sworn, testified as follows:

Direct examination by Miss Robinson:

Q. You are the widow of Frank Eberle? A. Yes.

Q. When were you married? A. The seventh of March, 1913.

Q. Where? A. In Switzerland. 6145

Q. Have you your marriage certificate with you? A. Yes.

(The witness produced a marriage certificate which was examined by Miss Robinson and Mr. Hagen.)

Mr. Hagen: I have no objection to offer.

Miss Robinson: It is conceded that Mrs. Eberle was duly married.

Q. Where there any children born of the marriage? A. Yes. 6146

Q. How many? A. One.

Q. When you married Frank Eberle, had he been a widower? A. Yes.

Q. Did he have any children by his first wife? A. Yes, one.

Q. Were they both living with you and Mr. Eberle on December 20th, 1926? A. No.

Q. Where were they living? A. One was living with me, now I have the both out in Germany.

Q. Prior to December 20th, 1926, did they live with you? A. No they were both away. 6147

Q. Your husband had contributed to their support while in Germany? A. Yes.

Q. And to your support? A. Yes.

Q. What were his average earnings about, in Spencer Kellogg? A. At Spencer Kellogg—seventy dollars including the rooming house.

Q. How much did he get at Spencer Kellogg? A. Thirty dollars a week.

Q. Did he have any other work beside Spencer Kellogg? A. Yes.

6148 Q. What was that? A. A rooming house.

Q. How much did he make out of the rooming house? A. Forty dollars a week.

Q. His total average earnings during his lifetime were seventy dollars per week? A. Yes.

Q. How long had he been working at Spencer Kellogg? A. About five years.

Q. Do I understand there was a time he wasn't employed? A. Yes, he left a few times.

Q. When was he hired again? A. About five days before he is dead.

Q. While he was not working in Spencer Kel-
6149 logg, how long a period was that? A. Sometime it was ten weeks, sometimes less than that.

Q. Did he do any other work with the exception of that work he did at the rooming house, while laid-off from Spencer Kellogg? A. No.

Q. His average earnings were about seventy dollars a week? A. Yes.

Q. You and your husband were living together up to December 20th, 1926? A. Yes.

Q. When did you last see him alive? A. December 20th, 1926.

Q. About what time? A. About six o'clock in the morning.

6150 Q. Did he state where he was going? A. Yes, away, over to New Jersey.

Q. Did he state how he was going over? A. Yes.

Q. How? A. On the "Linseed King".

Q. Was his body recovered? A. Yes.

JULIA DANIEL, claimant, being duly sworn, testified as follows: 6151

Direct examination by Miss Robinson:

Q. You are the widow of Samuel T. Daniel? A. Yes.

Q. When were you married?

(The witness produced her marriage certificate.)

Miss Robinson: It will appear on the record that Mrs. Julia Daniel was married to Samuel T. Daniel, on the 29th day of July, 1909, by Rev. George Fisher Miller, Episcopal Church of St. Augustine, Brooklyn. 6152

Mr. Hagen: It is conceded that Mrs. Daniel was duly married.

By Miss Robinson:

Q. Were there any children born of the marriage? A. No.

Q. How old are you? A. Forty-nine.

Q. How old was your husband? A. Forty-five. 6153

Q. Were you living together with your husband prior to and up to December 20th, 1926? A. Yes.

Q. When did you last see him alive? A. Monday morning.

Q. What time? A. He left the house about half past five or so.

Q. Did he say where he was going? A. Yes he said he was going on the boat of Spencer Kellogg.

Q. Was his body recovered? A. Yes.

Q. Did you bury it? A. Yes I buried it.

6154 Miss Robinson: I ask the Commissioner to take judicial notice of the fact that the body of Samuel T. Daniel was recovered and taken out of the motor launch "Linseed King" on December 20th, 1926, number 3141. May it appear on the record that Mrs. Daniel paid $259.75 for the burial of Samuel T. Daniel, for which this receipted bill was issued.

(The witness had produced a receipted bill of the undertaker.)

6155 Q. Mrs. Daniel, you were appointed Administratrix of your husband's Estate? A. Yes.

Miss Robinson: I offer the Letters of Administration issued on the 21st day of December, 1927, to Mrs. Julia Daniel the widow of Samuel T. Daniel and to Mary Slawter.

(Offered in evidence, marked Claimant's Exhibit 1.)

Mr. Hagen: I desire to enter the same objection.

6156 The Commissioner: The same ruling.

By Miss Robinson:

Q. Had your husband been employed by Spencer Kellogg previous to the accident? A. Yes he was.

Q. How long had he been employed? A. From the 12th of October.

Q. What were his average earnings? A. I think about twenty-eight or thirty.

Q. What did he do or what was his occupation

before he went to Spencer Kellogg? A. He was working in a sugar factory. 6157

Q. How much was he getting there? A. Thirty or thirty-five.

Q. How long had he been working there? A. Ten years.

Q. That was his average earnings for the past ten years? A. Yes, sometimes more because of working over-time.

Q. During his lifetime had he been contributing to your support? A. Yes.

Q. How much did he give you? A. He always gave me twenty dollars. 6158

Q. Each week? A. Yes.

Q. He took care of his own expenses out of what he had left? A. Yes he did.

Q. Did he leave any property? A. No.

Q. Did he have any source of income beside what he earned by his labors? A. That is all. He had nothing.

Q. Have you any means of support? A. No.

Cross examination by Mr. Hagen:

Q. Where did you live at the time your husband died? A. 18 Holt Street. 6159

Q. Brooklyn? A. Yes Brooklyn.

Q. Out of the twenty dollars per week which he paid you, you ran the table? A. Yes I ran the table.

Q. Did you pay any of his expenses, his clothing for instance? A. No.

Q. He paid that himself? A. Yes.

Q. What did your table cost you per week, Mrs. Daniel? A. I never counted it up, sometimes over the twenty dollars.

6160 Q. Who lived at your house beside you and your husband? A. My daughter.

Q. Miss Slawter? A. Yes.

Q. Did she pay anything toward the running of the house? A. No she didn't pay anything.

Q. Miss Slawter paid nothing toward the running of the house? A. No. She wasn't working steady she is not well.

Q. What did she work at? A. In a factory but they are laid off now.

Q. What kind of a factory? A. In a pocket-book factory.

6161 Q. How old is she? A. Twenty-seven.

Q. She is a daughter by another marriage? A. Yes.

Q. Did your first husband die? A. Yes he died.

Q. How long ago? A. A good many years ago I cannot realize it, he died with small-pox.

Q. In this country? A. Yes, right here.

Q. Can you give me an idea of how much your daughter did contribute to the up-keep of the house? A. When she had it she helped some but not much I can tell you, sometimes she gave me five dollars a week.

Q. That five dollars a week would not be enough
6162 to pay for her board? A. No it didn't, but that's what she gave me.

Q. The board of one ran more than five dollars per week? A. Yes.

Q. How much would it run? A. I paid no attention, I spent it.

Q. You seem quite sure that it was more than five dollars? A. Yes, but that's all she gave me.

Q. The board of one is more? A. Yes more than that.

Q. How much more would it be? A. If she gave me ten it would be good. 6163

Q. Ten would about cover it? A. Yes.

Q. That would be a fair estimate to keep one person? A. Yes.

Q. Who paid the rent when your husband was alive? A. He paid the rent.

Q. Out of his eight dollars? A. He paid the rent and sometimes I helped him if he couldn't make it up, out of the money he gave me.

Q. What is the rent? A. Forty-eight dollars.

Q. He could hardly pay that out of eight dollars a week? 6164

Miss Robinson: It appears on the record that he made thirty and thirty-five dollars a week for the past ten years.

Mr. Hagen: I am trying to get out the fact.

Q. Who paid the rent?

Miss Robinson: She testified who paid the rent.

Mr. Hagen: Please don't answer for the witness. 6165

A. I paid part, if he couldn't make it meet then I helped but I got it back just the same if he worked and got more he gave me more.

Q. Do I understand the arrangement was you were to pay the rent out of the money——

Miss Robinson: I object on the ground that it is putting words in the mouth of the witness.

6166 A. He couldn't make me change it, he paid the rent himself. I cannot say I paid the rent.

Miss Robinson: You said she paid the rent, she already said ten times, he paid the rent.

By Mr. Hagen:

Q. Where did he work before he went to Spencer Kellogg? A. In Williamsburg, in a sugar factory.

Q. Which one, Warner or American? A. Amer-
6167 ican.

Q. What was his job? A. Lifting bags of sugar. He made good at that too.

Q. Do you know who he worked under there, who was his boss? A. I don't remember, I did hear him speak of him.

Q. On the dock? A. No.

Q. In the refinery? A. Yes.

Q. Do you know what he did at Spencer Kellogg? A. Yes he told me he was working in the building, shipping.

Q. Did he tell you who he worked for? A. Yes,
6168 I cannot remember.

Q. When he got the work he told you where he was working and who for? A. For Spencer Kellogg.

Q. Did he ever work for the Menser Bag Company? A. No, I don't think so.

Q. You don't remember? A. No.

EDITH SAMUELS, Claimant, being duly sworn, testified as follows: 6169

Direct examination by Miss Robinson:

Q You are the widow of John B. Samuels? A. Yes.

Q. When were you married? A. The second of May, 1912.

Q. Have you your marriage certificate with you? A. Yes, I got it.

Miss Robinson: I offer the certificate of marriage of Mrs. Edith Samuels to her husband Benjamin Samuels on the 2nd of April, 1912. 6170

(Offered in evidence, marked Claimant's Exhibit 1.)

Q. Were there any children born of the marriage? A. Yes, I have two.

Q. How old are they? A. One will be fifteen and the other one eleven, a boy and a girl.

Q. How old are you? A. I am thirty-five years.

Q. Were you living together with your husband up to and on December 20th, 1926? A. Until the time of the accident, yes. 6171

Q. During his lifetime did he contribute to your support? A. Always.

Q. How much did he contribute to your support? A. He contributed as much as he made. He usually made thirty or thirty-one dollars a week.

Q. He gave that all to you? A. All that to me.

Q. When did you last see him alive? A. Monday the twentieth of December at half past five.

6172 Q. Did he state where he was going? A Yes.

Q. Where? A. To work.

Q. Did he say how he was going to work? A. Yes, he did.

Q. On the Launch? A. Yes.

Q. Was his body recovered? A. No, it wasn't.

Q. Have you ever seen him alive since December 20th, 1926? A. No.

Q. How long had he been working for Spencer Kellogg? A. About three months, from October fourth until that time.

Q. Did you receive any money from Spencer Kellogg? A. Yes, I got the last week's wages
6173 he worked for and an extra check.

MARGARITA GAMEZ DE MEZA, claimant, being duly sworn, testified as follows:

By Adolfo G. Dominguez, an Interpreter, who being first duly sworn, was examined by Mr. Hagen, as follows:

Q. For whom do you work? A. The Mexican Consul's office.

6174 Q. What is your position there? A. Chancellor, head of the Protection Department.

Q. What is the Protection Department? A. For such cases as this for instance in which a Mexican applies for protection, then we see he is entitled to all justice and that he is done justice in every respect

Q. Did you know this lady before December 20th, 1926? A. No, sir.

Q. When did you first meet her? A. It must have been about three weeks.

Q. Three weeks ago? A. Yes, sir. 6175

Q. In what connection did you meet her? A. She applied for counsel in the case of the "Linseed King" and she said she had engaged a lawyer and that anyhow, inasmuch as she didn't speak the English language, she wanted me to interpret for her

Q Did you then go to the lawyer's office with her? A. No, in fact I must make it clear that my position in this case, inasmuch as she has a lawyer in this matter, is to interpret her in this hearing.

Q. You are a Mexican citizen? A. Yes.

Mr. Hagen: I am willing to proceed with him. 6176

Direct examination of Margarita Gamez De Meza by Miss Robinson:

Q. What is your name? A. Margarita Gamez De Meza.

Q Are you the widow of Domingo De Meza? A. Yes.

Q. When were you married? A. May 18th, 1926.

Q Where were you married? A. Tampico, State of Damaulieas, Mexico.

Q. Do you have your marriage certificate with you? A. Yes. 6177

Q. Will you produce it please?

(The witness produced a certificate which she handed to Miss Robinson.)

Miss Robinson: It is in Mexican or Spanish. I will offer it in evidence and have it translated.

(Offered in evidence, received and marked Claimant's Exhibit 1.)

6178 Q. Were there any children born of the marriage? A. No.

Q. How old are you? A. Twenty-three years old.

Q. Were you living with your husband prior to and on December 20th, 1926? A. Yes.

Q. When did you last see him alive? A. Five o'clock on the day of the catastrophe when he went out to work in the morning.

Q. Did he say where he was going on that morning? A. He said he was going to work.

Q. Where was he working at the time? A. Spencer Kellogg Company in Jersey.

6179 Q. Was his body recovered? A. It was recovered.

Q. Did you pay the funeral expenses for burying your husband? A. The undertaker is still waiting for payment.

Q. You are indebted to Edward F. Donovan for the funeral expenses of your husband in the amount of $171.50? A. Yes, I owe him.

Miss Robinson: I offer the bill of Edward F. Donovan, Undertaker, for the burial of Domingo De Meza.

6180 (Offered in evidence, received and marked Claimant's Exhibit 2.)

RICARDO ZAMUDIO, a witness called on behalf of the Petitioner, having been duly sworn, testified as follows: by Gabriel Marques, an interpreter:

Direct examination by Mr. Hagen:

Q. Where do you work now? A. With Spencer Kellogg.

Q. Where did you work on December 20th, 1926? A. I was working in the same place. 6181

Q. Have you been working for Spencer Kellogg continuously since December 20th, 1926? A. Yes.

Q. Have you been away from their employment at any time? A. Only on account of illness.

Q. You had an injury sometime within the last year did you not? A. Yes, something fell on my foot, I was injured and the company sent me to the hospital.

Q. Were you on the "Linseed King" the boat of Spencer Kellogg the day she went down down? A. Yes. 6182

Q. Did you know a man Domingo De Meza? A. Yes, I knew him.

Q. Where did you know him first? A. I met him first at New Orleans.

Q. What was Domingo De Meza's occupation or business? A. He was a fireman on board ships.

Q. On what ships was he fireman? A. He was on the "Rajah", of the Registry of the Port of New York, on another ship on the run from Tampa, Florida to New York by the name of "United States". 6183

Q. What were you doing on those ships? A. I was working on another ship, on the "City of Rome" as fireman too.

Q. When did you come to live in the United States? A. In 1924 I came to live permanently in the United States but before that I was working as a seaman on ships of the Mexican Company.

Q. When did you go to work for Spencer Kellogg? A. I do not recall exactly I think it was in April of 1926 it was on a Tuesday.

6184 Q. Are you sure it was in April or aren't you sure? A. I am not very certain, I think so.

Q. Do you remember Domingo De Meza? A. Yes, I remember him.

Q. When did he go to work for Spencer Kellogg if you know? A. He had started to work about a week or so before me. He was the one who took me to the plant of Spencer Kellogg.

Q. What work was Domingo De Meza doing at Spencer Kellogg? A. He was a pressman.

Q. That is the same work as you were doing? A. Yes.

6185 Q. Did you see the body of Domingo De Meza after the accident? A. Yes, we buried him.

Q. And the body which you saw was the body of the man who worked at Spencer Kellogg under the name of Domingo De Meza? A. Yes.

Q. Was Domingo De Meza a steady worker?

Miss Robinson: I object it is not clear as to what he means by the word "steady".

By Mr. Hagen:

6186 Q. Did Domingo De Meza work regularly at Spencer Kellogg?

Miss Robinson: I object it isn't the best way of proving the fact.

The Commissioner: I will allow it and give you an exception

By the Witness:

A. During the time I knew him he had been working there all the time until this accident occurred.

Miss Robinson: I will withdraw my ob- 6187
jection

By Mr. Hagen:

Q. He worked regularly? A. Yes, I don't recall that he was absent because he had expected to bring his mate up here.

JOSEPHINE MORALES, Claimant, being duly sworn, testified as follows:

6188

Direct examination by Miss Robinson:

Q. You are the widow of Carlos Morales? A. Yes.

Q. When were you married? A. May 29, 1925.

Q. Do you have your marriage certificate with you? A. I forgot it, I am sorry, I will send it to you.

Q. Where were you married? A. City Hall.

Q. In New York? A. Yes.

Q. Were there any children born of the marriage? A. We have two children.

Q. How old are they? A. One is two years 6189
and the other is nine months.

Q. The one nine months old was born after the death of your husband? A. Yes.

Q. How old are you? A. Twenty-six.

Q. How old was your husband at the time of his death? A. Twenty-seven when he died.

Q. You were living together with your husband and one child at the time of his death? A. Yes.

6190 Q. When did you last see him? A. The same morning, about six o'clock in the morning.

Q. Where did he say he was going? A. He said he was going to take the boat to go to work.

Q. Was his body recovered? A. Never recovered.

Q. You were appointed administratrix of your husband's estate? A. Yes.

By Miss Robinson: I offer the letters of administration issued to Josephine Morales on the estate of Carlos Morales, dated the 13th day of May, 1927.

6191

(Offered in evidence, marked Claimant's Exhibit 1.)

Q. Had your husband been working for Spencer Kellogg up to the time of his death? A. Yes.

Q. How long? A. About five months.

Q. Did you receive any money from Spencer Kellogg? A. Only one week he worked and another.

Q. They gave you another week's salary? A.

6192 Yes.

Q. Was that a contribution? A. Yes, I think so.

By Mr. Hagen: I will concede that the other week's salary was a present.

By Miss Robinson:

Q. What were his average earnings at Spencer Kellogg? A. Thirty-three sixty.

Q. Had he been regularly employed during his lifetime? A. Yes.

Q. How much did he contribute to your support? A. Twenty-five dollars. 6193

Q. Per week? A. Yes.

Q. Did he leave any property at the time of his death? A. No.

Q. Did he have any other source of income except what he earned? A. No.

Q. How are you being maintained since the death of your husband? A. I am being maintained by the charity organization.

Q. A temporary aid? A. Yes.

Q. Your married life was a happy one? A. Certainly.

Q. There was no reason for him to destroy his life? A. No reason. 6194

VERA ALEXANDER, Claimant, being duly sworn, testified as follows:

Direct examination by Miss Robinson:

Q. You are the widow of James Alexander? A. Yes.

Q. When were you married?

(The witness exhibited a marriage certificate No. 108184 issued by the City of New York, January 15th, 1925.) 6195

Mr. Hagen: I will concede that Mrs. Alexander was duly married.

Q. Were there any children born of the marriage? A. One baby born one year after I was married.

Q. How old was the baby when your husband died? A. Three months.

6196 Q. How old are you? A. I am 35 on the 29th of January.

Q. How old was your husband? A. Thirty years old. Some papers they have twenty-eight and some thirty. It is a mistake he is thirty.

Q. You were living together with your husband up to the 20th day of December, 1926? A. Up to the last moment he died.

Q. When did you last see him alive? A. The last morning he left home.

Q. December 20th, 1926? A. Yes.

Q. What time? A. At ten to six.

6197 Q. Was he employed by Spencer Kellogg? A. Yes he did.

Q. How long had he been working for them? A. All summer until December he got drowned.

Q. What were his average earnings? A. Thirty-three sixty.

Q. How much of that did he contribute to you and the support of the child. A. I collected all.

Q. Was he regularly employed during his lifetime? A. No, when he got it. That was the only place he was regularly employed.

Q. At Spencer Kellogg? A. Yes.

Q. He was generally employed at Spencer Kel-

6198 logg while you were married? A. Yes.

Q. Was he in good health? A. Yes.

Q. Was his body recovered? A. Yes he did.

VIRGINIA SUMNER, Claimant, being duly sworn, testified as follows:

Direct examination by Miss Robinson:

Q. You are the widow of Fred Sumner? A. Yes.

Q. When were you married? A. In 1920. 6199

Q. Where? A. In Virginia—Portsmouth.

Q. You were going to get the certificate for me? A. Yes.

Q. Has it come? A. My sister is expressing my trunk, it has not got here yet.

Miss Robinson: Mr. Hagen, have you any objection to waiting?

Mr. Hagen: I would like to have it.

By Miss Robinson:

Q. Were there any children born of the mar- 6200
riage? A. One.

Q. How old was she? A. Five years at the time of his death.

Q. How old are you? A. Twenty-seven.

Q. How old was your husband? A. He was twenty-seven the 13th of December before the disaster.

Q. When did you last see him? A. On Monday morning around five o'clock—December 20th.

Q. Did he state where he was going? A. To Spencer Kellogg.

Q. Had he been working there before? A. 6201
Yes.

Q. How long? A. Since April 3rd, 1926.

Q. Was the body of Mr. Sumner recovered? A. No.

Q. Have you ever seen your husband since December 20th, 1926? A. No.

Q. Did he leave at the same time he usually left in the morning? A. Yes.

Q. Was your married life a happy one? A. It was nice.

6202 Q. He had no reason to destroy his life? A. No.

Q. You were appointed administratrix of your husband's estate? A. Yes.

Miss Robinson: I offer in evidence the letters of administration issued to Virginia Sumner on the estate of Fred Sumner, dated January 26th, 1927—Surrogate's Court, Kings County.

(Offered in evidence, marked Claimant's Exhibit 1.)

6203 Q. Did you get any money from Spencer Kellogg after your husband's death? A. I did.

Q. What did you get? A. I got thirty-three sixty.

Q. That was for a week's wages due him? A. Yes.

Q. Did you get any contribution from them? A. I did not.

Q. Was it one pay check which you got or two? A. I don't remember myself, they came in and gave it to his sister.

6204 Q. And you don't recall? A. No.

Q. How much did your husband earn per week, during his lifetime? A. At Spencer Kellogg he earned thirty-three sixty a week.

Q. Had he been regularly employed? A. Yes.

Q. What was his occupation? A. Working at a press machine.

Q. Did he do any other work in addition to working at Spencer Kellogg? A. No—he was a janitor.

CELESTINE MATHAIS, Claimant, being duly sworn, testified as follows: 6205

Direct examination by Miss Robinson:

Q. Where do you live? A. 214 West 146th Street.

Q. You are the widow of Adolphus Mathais? A. Yes.

Q. When were you married? A. I was married the 5th of July, 1924.

Q. Have you your marriage certificate with you? A. Yes.

Q. May I see it? 6206

(The witness submitted a certificate from the Chapel of the Crucifix dated New York City, July 5, 1924, signed by Rev. J. Edmead, Priest.)

Q. Were there any children born of the marriage? A. Two children—twins.

Q. How old were they at the time of your husband's death? A. A year and a half.

Q. How old are you? A. Twenty-eight.

Q. How old was your husband? A. Thirty.

Q. Were you living together with your husband and the two children, previous to and on December 20th, 1926? A. Yes. 6207

Q. When did you last see him? A. Six o'clock in the morning.

Q. Did he state where he was going? A. He said he was going to work and took his lunch.

Q. Was his body recovered? A. Yes.

Q. Did you pay the funeral expenses? A. The charity paid it.

Q. The charity organization? A. Yes.

6208 Q. Where was the body recovered? A. In Jersey.

Q. How long after the accident? A. Six months.

Q. Six months after the accident? A. Yes.

Q. Was it identified by you? A. Yes.

Q. Who else? A. Mr. Jenkins and Mr. Jackson.

Q. Were Spencer Kellogg notified? A. I guess the lawyer did, I don't know, his check was found on him..

6209 By the Commissioner:

Q. Where do they live? A. Jenkins—370 West —St. Nicholas Avenue.

Q. And Mr. Jackson? A. He was living there but he moved, I guess Mr. Jenkins could tell where he is.

Q. What check was found on him? A. His check number.

By Miss Robinson:

Q. How long was he working for Spencer Kellogg? A. About a year.

6210 Q. What were his earnings? A. Thirty-three sixty.

Q. Did he contribute to your support and the support of the children? A. Thirty-three sixty.

Q. Did he leave any property? A. No.

Q. How are you being supported now? A. The charity organization give me money and pay my rent. They give me $9.30 a week. I am living in three little rooms—cold flat. I pay $24.00.

Q. You don't work? A. No, I couldn't work with the two children.

Miss Robinson: I offer the Letters of Administration issued to Celestine Mathais on the Estate of Adolphus Mathais. 6211

(Marked Claimant's Exhibit 1.)

(Subject to the usual objection by Mr. Hagen, and the ruling heretofore made by the Commissioner.)

Cross examination by Mr. Hagen:

Q. Mrs. Mathais where did you live at the time of your husband's death? A. At the same place. 6212

Q. You had the same apartment? A. Yes—my husband had five rooms but when he was out of work—he had been making $40 a week—and I couldn't help him to do anything, so he gave up the apartment he was paying $55 a month and took the three rooms until he got a better job and we would get a better apartment.

Q. How long was he out of work? A. He lost his job for three months then went over to Spencer Kellogg—he saw it in the paper, to get a job for $33.60.

Q. How long was he working at Spencer Kellogg? 6213

EMERANCE HAMILTON, Claimant, being duly sworn, testified as follows:

Direct examination by Miss Robinson:

Q. Where do you live? A. 11 East 118th Street, New York City.

Q. You are the widow of Joseph Hamilton? A. Yes.

6214 Q. When were you married? A. In 1924.

Q. Was the marriage celebrated by any religious or civil ceremony? A. No civil ceremony.

Q. How long did you live together as husband and wife? A. A year and a half.

Q. That is, up to the time of the accident? A. Yes.

Q. You used his name? A. Yes.

Q. I mean during your marital relations? A. Yes.

Q. Were any letters ever addressed to you as Mrs. Hamilton? A. Yes.

6215 Q. Did you bring them with you? A. I cannot find them, I am moving and cannot find them.

Q. Did you collect your husband's insurance when he died? A. Yes.

Mr. Hagen: I object.

Miss Robinson: I wish to bring this out to show a common-law marriage, to show a reputation in the community, even letters addressed to a person would establish that.

The Commissioner: What is your objection Mr. Hagen. If it is shown to es-

6216 tablish a reputation in the community, I will allow it.

Mr. Hagen: I want my objection to stand.

By Miss Robinson:

Q. You took care of his meals and clothing, as your husband? A. Yes.

Q. You were living together up to and on December 20th, 1926? A. Yes, he left home at 6:10.

Q. Did he state where he was going? A. Yes, 6217
to work, he had been working the day before.

Q. Had he been working at Spencer Kellogg? A. Yes, four or five months.

Q Was his body recovered? A. Yes it was.

Q. How much did he contribute to your support? A. About thirty dollars.

MICHAEL W. MCGLOIN, a witness on behalf of Annabelle Wisdom, being duly sworn, testified as follows:

6218

Direct examination by Miss Robinson:

Q. Are you employed by Spencer Kellogg & Sons Co., Inc.? A. Yes.

Q. In what capacity? A. Control clerk.

Q. What is a control clerk? A. In the Maintenance Department in charge of making repairs and improvements to the plant.

Q. Shortly after the accident of December 20th, 1926 did you visit various claimants? A. I did.

Q. As a result of the "Linseed King" disaster? A. I did.

Q. And you distributed checks to the various 6219
members of the families of the men who lost their life on the "Linseed King"? A. I did.

Q. Do you recall visiting Mrs. Annabelle Wisdom? A. I do.

Q. Do you recall giving her a check in payment of her husband's wages? A. I do not, I wasn't there that night, it was delivered by Mr. Agster.

Q. That was delivered to her as the wife of Nathaniel Wisdom, for wages due her husband? A. That was delivered on December 24th

6220 Q. Was that for wages up to and to the date of his death? A. I didn't see the check.

Miss Robinson: I ask that Mr. Hagen produce the check.

Mr. Hagen: I object as it is immaterial as to whether it was paid for wages to his wife. We paid it to the order of the man. He had been working for us a week and didn't come back. That was for a week's pay.

Miss Robinson: Mr. Wisdom was working for you for more than a week. I am
6221 showing a holding out in general, an admission on the part of Spencer Kellogg that she was the widow. They paid her the money.

Mr. Hagen: When the accident occurred, whenever there was a claimant who said they lost anyone in the accident, right before Christmas we issued blanket instructions that they should not make too rigid an investigation into the claims but rather than have a dispute, we paid out checks regardless of any investigation whatever.
6222 We paid a number of checks to people who were not entitled to them. That is absolutely no proof.

ANNA BELLE WISDOM, Claimant, being duly sworn, testified as follows:

Direct examination by Miss Robinson:

Q. Are you the widow of Nathaniel Wisdom? A. Yes.

Q. How old are you? A. Twenty-four years 6223
old now.

Q. How old was your husband? A. Thirty years old when he died.

Q. Were you living together on and up to the morning of December 20th, 1926? A. Yes.

Q. What time did you see him? A. I got up at 4:30 and fixed his breakfast, the last time I saw him was around twenty-five after five the morning he goes down stairs to go to work.

Q. Was his body recovered? A. Yes.

Q. Where? A. His body was recovered on the Jersey side.

Q. How long after the disaster? A. Two 6224
months afterwards, the 28th of February.

Q. Did you identify his body? A. Yes, I did.

Q. Who was with you at the time? A. Miss Matthews and the man in there now, Johnson.

Q. Junius Johnson? A. Yes.

Q. Did you pay for the funeral expenses? A. No.

Q. Do you know who paid for them? A. The charity organization.

Mr. Hagen: I have a receipt here that we paid for it, we paid the charity or- 6225
ganization for it.

By Miss Robinson:

Q. Who paid for the burial of your husband? A. The charity organization paid $150.

Q. Why didn't you pay for it? A. I didn't pay for it, I had to get the body and it was before I got the insurance money.

Q. Had he been working for Spencer Kellogg & Sons? A. Yes.

6226 Q. How long? A. It was since about—I don't know how many months he was working there.

Q. Did you get a check from Spencer Kellogg & Sons? A. Yes, $33.60 from Spencer Kellogg.

Q. Was that for your husband's wages? A. Yes, it was my husband's week's pay.

Miss Robinson: Mr. Hagen, have you the check there.

Mr. Hagen: I probably have.

Mr. Robinson: I want to prove the signature on it now.

6227 Q. What were your husband's wages while working at Spencer Kellogg? A. Thirty-three sixty.

HARRY NELSON, a witness on behalf of Anna Belle Wisdom, being duly sworn, testified as follows:

Direct examination by Miss Robinson:

Q. Where are you employed? A. Spencer Kellogg & Sons, Edgewater.

Q. What position have you there? A. Pay-
6228 master and timekeeper.

Q. How long have you occupied that position? A. About two years.

Q. You were in that capacity on November 12th, 1926? A. Yes.

Q. When did you first start to work at Spencer Kellogg? A. I don't remember the date.

By the Commissioner:

Q. About the time? A. It was about in May two years ago, that's 1926.

By Miss Robinson: 6229

Q. Do you recognize this form that I show you, produced by Mr. Hagen, the attorney for the petitioner, Spencer Kellogg & Sons? A. Yes.

Q. Will you briefly tell us just what that form is and how you obtain the information contained thereon? A. The form is a record that we keep of the employee as he is hired. When the man comes for a position, if we have one to give him we ask his name, address, whether he is married or single, his age and whether he has any other dependents or not. 6230

Q. Was that form made up in the regular way? A. That form was made in the regular way.

Miss Robinson: I offer this form of Spencer Kellogg and Sons, marked form 39 Employment Department, Spencer Kellogg, Clock 5114 dated November 12th, 1926, in connection with the Wisdom case.

Mr. Hagen: I object, it doesn't show where that information came from.

Miss Robinson: He says it is made in the regular way.

Mr. Hagen: What is the purpose of offering it? 6231

Miss Robinson: All the information including everything is all on that blank, that's what I offer it for.

Mr. Hagen: I object to it, it is not the best evidence. I would like to know for what purpose it is being offered.

Miss Robinson: It is offered for the purpose of showing that Nathaniel Wisdom held himself out to be married.

6232 Mr. Hagen: I object, it is not an issue in this case, the issue is whether he was married to Anna Belle. It has no probative force.

Miss Robinson: It has.

Mr. Hagen: I would be willing to stipulate that he was married to three or four women the same way as he was married to her. The issue is who was he married to.

Miss Robinson: We have connected it up to show he was married to Anna Belle Wisdom. That of itself has no value but connected with everything else, the burden 6233 is upon us to show he held himself out to be married. It is merely a bit of information in our chain of evidence.

By the Commissioner:

Q. Was this a correct transcript from the records over there? A. Yes.

The Commissioner: I will allow it for what it is worth.

Mr. Hagen: It is not connected with any 6234 particular woman. It doesn't show who the wife was, if any.

The Commissioner: I will allow it for the purpose of showing he was married, to that extent only, as far as this paper goes.

Mr. Hagen: I don't think it is merely a conclusion, a man might think he was considered a husband under certain circumstances.

The Commissioner: There is expected to be proven here that this man was married

because the statement is made that he was married, to what extent it is probative I don't know. I will allow it for what it is worth and give you an exception. 8225

Cross examination by Mr. Hagen:

Q. I see the stamp of C. E. Stover on the bottom, will you tell me what that signifies? A. It signifies that Mr. Stover approved the employment of that man.

Q. And that's all it means? A. Yes.

Q. Mr. Stover has never interviewed the man? A. He never interviewed the man. 8226

Q. The information I understand you obtained from whom? A. From Wisdom.

Q. Have you ever made any investigation of any of these cases to see how nearly correct the information is on these records? A. No.

Q. Let us take the addresses, have you ever checked up the addresses? A. No.

Q. Do you have any preferred list at your plant, do you give a man a preference if he is married or single?

Miss Robinson: This is not proper cross examination. I have only brought out certain information whether that record was made in the regular course, whether the information thereon came to him in the regular way. If he examines him he is making him his own witness. 8227

The Commissioner: Isn't he examining him as to this paper?

Miss Robinson: But he cannot impeach him. I ask for a reading of the question.

6238 (The question was read: "Do you have any preferred list at your plant, do you give a man a preference if he is married or single?")

I ask whether that has anything to do with my examination.

The Commissioner: I don't think it has. I know what he is getting at, as to whether the man is married or single, they put it down as he gives it.

Miss Robinson: Let him re-frame the question. I insist on my objection.

6239 The Commissioner: Mr. Hagen, I think you can reframe that question.

By Mr. Hagen:

Q. Do you have any preferred list at your plant, for employees? A. Yes.

Q. Tell us just what your regular practice is in regard to employees on that preferred list? A. In cases where we need men or more men at a particular time, I generally go out and ask the men if they are married or single. If two or three of them reply that they are married, I give
6240 them the preference of the position, rather than giving it to a single man.

Miss Robinson: I move to strike out the last part of that answer.

Mr. Hagen: He is the man that does it.

Miss Robinson: What is the difference, that answer is not responsive, as to whether the man gets the preference if he is married, it has nothing to do with this case. All I offered the paper for was as to the

statements contained therein, for the purpose of showing that Wisdom considered himself married. 6241

The Commissioner: I should think that would be favorable to you. I don't see why you object.

Miss Robinson: It isn't so favorable to me, he is trying to show that the men just say they are married so as to get a job, that isn't favorable to me.

The Commissioner: I don't think the answer implies that. I will allow the answer and give you an exception. 6242

(The application blank was marked Claimant's Exhibit 7.)

By Mr. Hagen:

Q. Do you have any personal knowledge as to whether you yourself interviewed Nathaniel Wisdom? A. That I have not.

Q. That's merely a transcript of the original. A. The original copy.

Q. Do you know who made the original copy? A. If I saw it I could tell you. 6243

Mr. Hagen: I wonder if we have the original copy here?

(Another application filled out in pencil was handed to Mr. Hagen.)

Q. Is that an original copy? A. That's the original copy.

Q. Did you make that out? A. I did not.

6244 Mr. Hagen: I move to strike everything out, he didn't make it.

Miss Robinson: He already testified it is a transcript.

Q. Are these your initials? A. Yes.

By Mr. Hagen:

Q. Who made the original record? A. One of the people in the pay-roll department.

Q. Do you happen to know whose handwriting it is? A. Yes, the boy's writing.

6245 Q. What is his name? A. Albert Bernotto.

Mr. Hagen: Under the circumstances I don't think it is properly proven.

The Commissioner: He says it is a correct transcript of the records.

Q. Is that right, Mr. Witness? What record is that a transcript of? A. Of this record.

(Indicating the pencil-written blank.)

By Miss Robinson:

6246

Q. Did you ever see that? A. Yes.

Q. Why didn't you put your initials on it? A. Because it is a copy for our files.

Miss Robinson: Then I offer this in evidence as well.

Mr. Hagen: I object.

Miss Robinson: He made a transcript, it is a transcript of the record, he testified it is a correct transcript of the record. If

you want to impeach the record, you can produce other witnesses. 6247

(To the Commissioner:) He testified he made a transcript of this paper.

Mr. Hagen: I tried to straighten out this matter, she wanted the man who initialed it and I have produced him.

Miss Robinson: I want the question which the Commissioner put to the witness read.

(The question which the Commissioner put to the witness was read, as also the answer.)

6248

Mr. Hagen: I want the man who made the original record.

Miss Robinson: He said it is a correct transcript, let it be marked in evidence or for identification, he cannot change his testimony, he said it is a transcript of the record.

The Commissioner: On the evidence that it is a regular trapscript from the original, I will allow it in evidence, this one that's marked and bears the signature. I think this should go in for what it's worth. If there is any discrepancy you can produce the record, Mr. Hagen. 6249

Mr. Hagen: I think it is up to Miss Robinson to show how the record is made.

Miss Robinson: He already testified it is a correct transcript of the record.

The Commissioner: Can you show that this is a correct transcript from the original record of Spencer Kellogg & Sons.

Mr. Hagen: The question is what is the record, who made it, let's have him here.

6250 Miss Robinson: He says it is made in the ordinary course of business.

The Commissioner: I think it is up to you to show whether it is usual or not.

Mr. Hagen: I would like to have the man who made up this record. I think it is up to Miss Robinson, if she wants to offer the record in evidence, she should show how it was made. He testified he made a copy of this (indicating the pencil written blank), which is unsigned, it doesn't mean anything.

The Commissioner: He said he had
6251 nothing to do with the making up of the record.

(To the witness:)

Q. Is that right? A. Not that record.

(Referring to the pencil-written blank.)

By Miss Robinson:

Q. Mr. Stover stamped that printed copy? A. Yes.

Miss Robinson: If you want to impeach your own records, go ahead.

6252 Mr. Hagen: We are not impeaching our own records.

The Commissioner: He can produce the person who made the original record.

Miss Robinson: His initials are on that and he testified that it is correct.

Mr. Hagen: My attitude is very plain as to that exhibit.

The Commissioner: You can attack this if you want, if the original record doesn't agree with this.

Mr. Hagen: That's the original record. 6252

Miss Robinson: That doesn't mean a thing to me.

By the Commissioner:

Q. Did you testify that was a correct transcript of the records of Spencer Kellogg (referring to the typewritten blank? A. Yes.

Q. Is this a copy of that (referring to the pencil-written blank)? A. That's the original copy when the man is interviewed. That (referring to the typewritten blank) is a transcript of this (referring to the pencil-written blank). 6254

Q. Are they both transcripts of the records kept by Spencer

Miss Robinson: I offer it in evidence then.

By Mr. Hagen:

Q. What other records have you there? A. We have no other records, the pencil copy is the original.

Miss Robinson: I offer both in evidence. He says they are both correct. I want the one he signed and said was a correct transcript of the original. You can offer this or mark it for identification (referring to the pencil-written copy). 6255

Mr. Hagen: I want to show how the record is made.

The Commissioner: It is in evidence (referring to the typewritten blank), we will mark this for identification.

(The pencil-written blank was marked for identification.)

STEPHEN NEMETZ, Claimant, being duly sworn,
6256 testified as follows:

Direct examination by Miss Robinson:

Q. How old are you? A. Thirty-six.

Q. Were you related to one George Nemetz? A. Yes.

Q. What was the relationship? A. Brother.

Q. Was he married or single? A. He was married.

Q. Where was his wife? A. His wife was in Europe.

Q. Did he have any children? A. One.

6257 Q. How old was your brother? A. Twenty-eight at the time he died.

Q. How old is his widow? A. About twenty-three.

Q. How old is the child? A. The child is about six now.

By the Commissioner:

Q. How old was the child when your brother died? A. About four years old, I have a birth certificate with me from Europe, the marriage and birth certificate, it is written in Slavic.

6258

Miss Robinson: I offer the marriage certificate of George Lements to Marion Lements and the birth certificate showing there was a child born of them.

(Offered in evidence, received and marked Claimant's Exhibits 1 and 2 respectively.)

Q. The child was born in 1922? A. Yes the 10th day of February.

Q. When were they married, will you tell us? 6259
A. They were married in 1921, the 20th of June.

(The witness referred to the marriage certificate.)

Mr. Hagen: I would like to have translations made of those certificates. If you will let me have the originals I will take care of it.

By Miss Robinson:

Q. Had your brother been working for Spencer Kellogg, do you know? A. Yes I know he 6260
was working for them.
Q. How long? A. About three years.

BERNARD LANG, Claimant, being duly sworn, testified as follows:

Direct examination by Miss Robinson:

Q. Where do you live? A. 294 Murray Street, Fairview, N. J.
Q. Were you on the boat on the morning of December 20th, 1926? A. Yes. 6261
Q. Will you tell us just what happened after the boat struck ice, what happened to you? A. Soon the boat struck ice, I smashed a window and took out the frame and jumped out of the window, the boat turns around and I stand outside and the boat turns over again and I fall in the water and swim to a piece of ice.
Q. How long did you remain in the water and on the ice? A. I cannot tell how long, three-quarters of an hour or an hour, I fainted.

6202 Q. You fainted in the ice? A. Not in the ice, on the ice.

Q. Before you fainted, do you recall having experienced any feeling at all? A. The first time I get a piece of ice I take my coat off and another fellow came on the ice and the ice goes down and I was in the water and swim to another piece, I stayed there twenty minutes and was frozen, my hands was cut and I was blooding and I got no coat on any more, the fellow next to me, I ask him to throw over another coat on his ice, I left the coat. I got the coat and I
6203 couldn't use it, then another fellow come on the ice, we go down again the third time, I save myself, the man got a thing around his neck, I catch it, I wait until another ice came along I get on it, I pull myself over and I fainted.

Q. Where did you wake up? A. In the hospital.

Q. What hospital? A. Harlem Hospital.

Q. How long were you there? A. Three days.

Q. What did you experience as respects yourself in the hospital? A. The first time I was alright, only a little bit shaky after a while my hands was in big wounds, they didn't put any-
6204 thing on it. They send me home and they were frozen and got worse, I was in the Lincoln Hospital.

Q. How long? A. I have a record of that.

(The witness handed Miss Robinson a letter.)

Miss Robinson: Mr. Hagen do you want to accept that in lieu of the doctor it is the record from the hospital.

Mr. Hagen: In view of the injuries, we better have the doctor. 6265

Miss Robinson: Alright, I will have the doctor.

Q. How long did you receive treatment at the Lincoln Hospital? A. The month of December, about the 27, until January 17 or 18.

Q. Can you refresh your recollection from that? A. Yes, January 21.

Q. During the time that you were going to the Lincoln Hospital did you work? A. No, I cannot walk.

Q. You have shown me a letter from the City of New York, Department of Public Welfare, Lincoln Hospital, dated July 14th, signed by the Medical Superintendent in which he says you were treated for lacerations on upper right leg and on left leg and on elbow, did you have any lacerations on your legs or elbows before December 20th? A. No. 6266

The Commissioner: Would that really be material.

Miss Robinson: Of course it is, he suffered from something he didn't have before the accident. 6267

The Commissioner: You can ask him if he had any medical treatment before that.

By Miss Robinson:

Q. Did you ever have any wounds of any kinds on your legs or arms? A. No never.

Q. How long in all were you confined to your home or the hospital after December 20th, 1926? A. I was home out of work about nine weeks or more than nine weeks.

6268 Q. When did you first go back to work? A. I got back to work on the fifth of January, 1927.

Q. Where had you been working? A. Spencer Kellogg.

Q. How long had you been working there before December 20th? A. Seven months.

Q. You went back to Spencer Kellogg & Sons? A. Yes.

Q. When you went back to work the first day, after the accident, who did you see at Spencer Kellogg, or did you go back to work? A. I was looking at the time-keeper Mr. Nelson and asked
6269 for work.

DOMENICK DARCO, Claimant, being duly sworn, testified as follows:

Direct examination by Miss Robinson:

Q. Where do you live? A. 1317 Hoe Avenue, Bronx.

Q. Are you married or single? A. Yes, married.

Q. How old are you? A. Thirty-two years
6270 now.

Q. Will you tell us in your own way what happened to you on December 20th, 1926, the day of the accident? A. I am in the boat and she goes down, when the "Linseed King" started to go down I got off and jumped in the water from the front. After I see all the broken ices, I get a chance to get on a bigger piece of ice. All the time I go up and down because of all the broken ice.

Q. Were you going from one piece to another?

A. Yes, the first piece of ice I stayed ten minutes, after I stand up, I go down and just I am there ten minutes, I just be in the water with all the ice. 6271

Q. How long did you remain in the icy water? A. Forty minutes in the water. I cannot swim, just stand up all much ice, too heavy, too close.

Q. Did anybody rescue you, pick you up? A. Yes the "Buffalo" boat, Monday morning.

Q. Where did they take you? A. 125th Street.

Q. Harlem Hospital? A. Yes.

Q. How long did you remain in Harlem Hospital? A. Twenty to twenty-three get off.

Q. Did you feel any pain while you were in the water, did it hurt you? 6272

By the Commissioner:

Q. Did anything hurt you? A. No, I can't stand.

By Miss Robinson:

Q. Were you frozen? A. I am frozen, the hands and when I get on the second piece of ice about forty minutes, yes, some fellow wants to help me. I am running on the ice. 6273

Q. Did you feel sick in the hospital (these various questions were put to the witness as it was apparent he didn't understand)? A. Yes, the nurse came and give me camphor oil, that's all.

Q. Describe where you felt sick? A. In the legs, every morning I get all pain on the legs, but afterwards I can walk.

Q. How about the hands? A. The same, after I do a labor job my hands get high like that.

6274 (The witness indicated that his hands were swollen.)

Q. When you got out of the hospital where did you go? A. Stayed in the house, I cannot work, my feet froze.

Q. How long did you stay home? A. Nine months.

Q. During that time were you able to do any work? A. No, just I try the first week to Spencer Kellogg.

Q. When was that? A. The first week I tried for the job but cannot work.

6275 Q. How long were you out of work after December 20th? A. Seventh of September, last year.

Q. You started to work September 7th? A. Yes.

Q. Where did you go to work? A. 125th Street.

Q. Where did you go to work, who did you work for? A. Just at the dock, Spencer Kellogg.

Q. How long had you been working for Spencer Kellogg before December 20th? A. 1922.

Q. You went back to work for them on September 7th, 1927? A. Yes.

6276 Q. Have you been working ever since September 7th, 1927? Are you still working there? A. Yes, just for Spencer Kellogg.

Q. Were you working regularly from September 7th, 1927 until today? A. Yes.

Q. What wages are you getting there now? A. Twenty-eight eighty, before I get thirty-one sixty-eight. I get another job, pile them up, the stuff on the dock.

JUNIUS JOHNSON, Claimant, being duly sworn, testified as follows: 6277

Direct examination by Miss Robinson:

Q. Are you married or single? A. Married.
Q. How old are you? A. Thirty-one.
Q. Were you on board the "Linseed King" on December 20th, 1926? A. Yes.
Q. Will you tell us in your own way what happened on that morning so far as you are concerned?

Mr. Hagen: Don't you think we could keep a lot of that out? 6278
Miss Robinson: No, I want it all in, the panic and excitement on board.

A. I got on the dock about 6:20, I saw a lot of men on the dock——
Q. Start from the time you were on the boat? A. After the men got on, me and a friend of mine got on and the captain started off. When we got a little way out the boat struck a cake of ice. It struck another cake further on and the water started coming in. A fellow said, "Captain, the boat is taking water". He said, "Stop kidding me". My feet were getting cold and the water was coming in. I got out and jumped in the water. I managed to get back on top of the boat when she straightened out. I was in water about up to my waist, about three-quarters of an hour. A tug-boat came and picked me up. 6279
Q. What were you doing in the water? A. Trying to keep from drowning.
Q. Did you feel any pain? A. I was very cold, my hands were frozen, my knees got cut up.

6280 Q. Were you rescued? A. Yes.

Q. Who rescued you? A. Buffalo Towing Company.

Q. Where did it take you? A. 129th Street, then to Harlem Hospital.

Q. How long did you remain there? A. I got out on the 22nd, about ten o'clock.

Q. How long were you there? A. Forty-eight hours.

Q. Where did you go after that? A. I went home.

Q. Did you remain home? A. I remained home a week.

6281 Q. During that time did you have any medical treatment? A. I went to see the doctor.

Q. Did he treat you for anything? A. Yes.

Q. What was the name of the doctor? A. Dr. Godfrey Nurse.

Q. While you were home did you feel any pain? A. Yes I did, I had quite a few pains that week and an awful cold.

Q. When did you go back to work, if at all? A. I went back on the 27th, I think.

Q. Where did you go back to work? A. I was in need and went back to Spencer Kellogg.

6282 Q. You had been working for Spencer Kellogg? A. Yes.

Q. How long? A. About nine months before the accident.

Q. Did you continue steadily at your work at Spencer Kellogg? A. No.

Q. How many days were you out of work? A. I lost quite a bit of work on and off.

Q. How many days? A. About thirty-five or forty days.

Mr. Hagen: I object to that testimony, it is not connected with the testimony as to whether he lost work. 6283

The Commissioner: Confine that to his condition.

By Miss Robinson:

Q. Were you able to work during those thirty-five days? A. No, I had pain.

Q. Is that why you didn't work? A. Yes.

Q. Were you paid for those days you were out of work? A. No.

Q. You are not working at Spencer Kellogg now? A. No. 6284

Q. When did you leave? A. The twenty-first of April.

Q. Did you go back to the same kind of work you did before at Spencer Kellogg? A. Yes.

HELEN ROBERTS, Claimant, being duly sworn, testified as follows:

Direct examination by Mr. Jayne:

6285

Q. How old are you? A. Twenty-seven years old.

Q. Where do you reside? A. 281 Avenue A.

Q. Were you married? A. Yes.

Q. What was your husband's name? A. Alfred.

Q. Alfred Roberts? A. Yes.

Q. What was the date of the marriage? A. June 27th, 1923.

Q. Did your husband Alfred work for Spencer Kellogg? A. He did.

6286 Q. For how long approximately did he work there, at the time of his death? A. Eight months.

Q. What was the nature of his employment, what did he do? A. Employed as a chauffeur.

Mr. Hagen: I will concede on the record that he was lost on the "Linseed King" on December 20th, 1926.

By Mr. Jayne:

Q. Were there any children of the marriage? A. One.

6287 Q. How old is that child? A. Three years old.

Q. At the present time? A. Yes.

Q. What was the date of its birth, do you recall? A. October 6, 1924.

Q. Is it a boy or a girl? A. A girl.

Q. What is her name? A. Eugenia.

Q. During the time you were acquainted with your husband, will you relate successively from the beginning, such employments as he had, as you know about, where he worked and what he earned? A. In the beginning, when we were first married, with the Ransom Shipbuilders.

6288 Q. What did he do there? A. Chauffeur.

Q. Do you know what he earned? A. Twenty-five dollars.

By the Commissioner:

Q. A week? A. Yes.

By Mr. Jayne:

Q. After that? A. For Dimick & Fink, drug supplies.

Q. What did he do there? A. Chauffeur too, I think. 6289

Q. Do you know what he earned there? A. I think $30.00.

Q. After that? A. I think he worked for this company after that.

Q. What were his earnings here? A. Thirty-five.

Q. What did he do with his earnings? A. He gave them all to me.

Q. Is that actually so that he gave them to you, or did he keep part and give you part? A. He handed all to me.

Q. What did you do with them? A. I gave him his allowance from it, for his lunch and about three dollars a week for spending money, sometimes, at times when I couldn't give it, he didn't get any. 6290

Q. With the rest you did what? A. Clothed my baby and bought food.

Q. And paid the rent? A. Yes.

Q. Did you have anything left in the way of saving? A. No, I couldn't save anything.

Q. Was your husband in the Army? A. Yes.

Q. How long? A. Three years.

Q. What rank did he hold? A. Corporal. 6291

Q. Do you know what schooling he had? A. Grammar school education.

Q. How old was he at the time of his death? A. Thirty years old.

Q. Describe what kind of health he was in? A. He was very strong and well-built, robust.

Q. Did he ever have any sickness to your knowledge? A. No.

Q. What sickness or ailments did he have while you were married to him? A. He never was sick.

6292 Q. How is your health at the present time? A. Alright.

Q. And the baby? A. Alright.

Cross examination by Mr. Hagen:

Q. Mrs. Roberts, your husband lived at home with you? A. Yes.

Q. Can you give us any estimates of what your table expenses were for yourself and your husband per week? A. That's pretty hard to tell.

Q. Give us a rough estimate—just a fair estimate? A. About fourteen dollars a week, figur-
6293 ing so much a day for groceries.

Q. Would you estimate that about half of that represented your husband's expenses? A. He was only home for supper.

Q. Did he have breakfast at home? A. Yes.

Q. How much would you say, what part of that would be required for his meals? A. I can't really say.

Q. The average estimate here seems to have been between six and seven dollars for a man's meals per week, would you say that was fair? A. I think so.

Q. What would you estimate as his expenses
6294 for clothing per year? A. His suits cost about thirty dollars.

Q. How many would he get? A. He only had one.

Q. What other personal expenses did he have? A. Shoes and things like that.

Q. How much do you think it would cost a year for his clothes, roughly? A. It could be about $100.

Q. You had a Church wedding I suppose? A. Yes.

Q. Where were you married? A. In the Im- 6295
maculate Conception Church.

Q. Where is that? A. 14th Street and Avenue A.

Re-direct examination by Mr. Jayne:

Q. At the time of your husband's death, how old were you? A. Twenty-six.

Q. How old are you now? A. Twenty-seven, going on twenty-eight.

Q. What were your husband's habits, did he get intoxicated? A. No.

Q. Did he treat you nicely? A. Yes. 6296

By the Commissioner:

Q. Have you been employed anywhere? A. No.

Re-cross examination by Mr. Hagen:

Q. Have you worked since your husband's death? A. No, I never worked since his death.

Q. Had you some means of support, at the time of your husband's death? A. No, only my father and mother.

Q. And their names? A. Townsend.

Q. Where do they live? A. The same address 6297
as I do.

LOUIS ORTIZ, Claimant, being duly sworn, testified as follows:

Direct examination by Miss Robinson:

Q. Where do you live? A. 436 Central Park West.

6298 Q. Are you married or single? A. Married.

Q. How old are you? A. About thirty-three I think.

Q. How old were you on December 20th, 1926? A. At the time?

Q. Do you know the date of your birth? A. About thirty-two years, maybe a little more.

Q. You are Spanish are you? A. I speak Spanish but I am South American.

Q. How long have you been in this country? A. About five years.

Q. Were you on the "Linseed King" on the morning of December 20th, 1926? A. Yes I was.

6299 Q. Will you tell us in your own way just what happened, after you got into the boat, or rather, when the boat struck ice? A. I cannot explain very well.

Q. In your own way? A. I get the boat about 6:30 I think, I don't know for sure, I haven't got a watch. A few minutes after I feel something happening to the boat and I try to get out. After I find a place on top of the boat.

Q. Was that after the boat went down? A. The boat don't go down, it stay on the water. After that I was there, I don't know how long.

6300 Q. Were you in the water? A. Sure in the water.

Q. Tell what happened? A. I don't know how long I was there, the boat came to pick us up and take us to the hospital.

Q. Were you on any ice? A. Yes I jumped in the ice cake and get the boat. When I jumped on a cake of ice and I get on top of the boat, I scratch my legs, get all freezing and I feel pain all over. I feel I die when I was in the water about an hour.

Q. You were in the water about an hour? A. I think so. 6301

Q. After that what happened? A. They bring me in the hospital.

Q. Just before you got to the hospital, did you feel any pain while in the water? A. More than that, I feel like dead before I get to the hospital.

Q. Who picked you up? A. Buffalo, I think.

Q. You were taken where? A. 125th Street I don't know, I am not sure.

Q. You were taken to the Knickerbocker Hospital? A. Yes.

Q. How long did you remain there? A. For about thirty hours I think. 6302

Miss Robinson: I have here the records of the Knickerbocker Hospital Mr. Hagen, will you concede this on the record?

Mr. Hagen (After looking after the hospital record): That would be about thirty hours, that's right.

Conceded on the record that the hospital records show he was in the hospital during the period from December 20th, 1926 to December 21st, 1926. 6303

By Miss Robinson:

Q. While in the hospital did you feel any pain? A. Sure, I get scratched on my legs.

Q. Describe it? A. I am all freezing, they put me in blankets and everything.

Q. Your legs were what? A. Scratches all over my knees and all places.

Q. When you left the Knickerbocker Hospital, where did you go? A. I go home.

6304 Q. How long did you remain home after that? A. I remained home, the next day about ten o'clock I go to the Spencer Kellogg.

Q. You went the next day to Spencer Kellogg? A. No, to Mr. Hagen's place.

Q. What did you do there? A. I sign some papers, he make me sign what I see in the boat and what happens.

Mr. Hagen: I object to that "made" him sign.

By Miss Robinson:

6305 Q. What did you do after that? A. I had to sign them, we don't sign, we don't get money.

Mr. Hagen: I also object to that.

By Miss Robinson:

Q. What did they tell you when they asked you to sign it? A. They say——

Q. Who, Mr. Hagen? A. Yes. We can say what we see and what happened, if we sign the paper they give us check, we got to sign the paper.

6306 Q. Did you read it? A. I don't read it, my friend sign and he understood more English than I did.

Q. Where did you go after that? A. I was there all day and after that I go home.

Q. How long did you remain home? A. For about a month.

Q. During that time did you receive any medical treatment, did any doctor take care of you? A. Yes.

Q. What doctor? A. Dr. Lopez.

Q. After that month did you go to work? A. No, I couldn't. 6307

Q. Where did you go after that month? A. I remained home about a month before I get up.

Q. How long did you remain home after that? A. I stayed home because I cannot walk, for about two months.

Q. After those two months where did you go? A. When I get up from my bed I go to see Mr. Hagen again about a month after that, so the company can fix me up I got to have an operation on my leg. Mr. Hagen try to fix me up, the company they don't want to do. I go home and stay there, I cannot walk. 6308

Mr. Hagen: I think his statements are bordering on a conclusion.

By the Commissioner:

Q. Who said the company don't want to do? A. Mr. Aldrich.

By Miss Robinson:

Q. How long did you continue to remain at home after that? A. I stay home two months. After two months I start going out to look for a job. 6309

Q. Where did you apply for a job? A. I go in the trolley car company, Third Avenue, try to get a job there, the doctor examine me and tell me he no don't find me good and chase me out, he don't give me the job.

Q. After that experience did you continue to look for work or did you remain home? A. I stay home and my sister-in-law, she get some work from where she worked to do home.

6310 Q. Were you sitting or standing while doing this work? A. Sitting, I am sewing some flowers.

Q. What kind of work were you doing? A. Flowers for lamps and children's dresses and all kinds things like that.

Q. How long would you say you were doing that work, for how long? A. I am doing this now.

Q. How many months after the accident did you start to do that kind of work? A. About March, I think.

Q. Of what year? A. This year.

Q. During 1927 did you do any work at all?
6311 A. No, I couldn't do it.

By the Commissioner:

Q. All of last year you didn't do any work? A. No.

By Miss Robinson:

Q. How much have you been getting doing this kind of work? A. About twelve, fifteen, sometimes eight dollars a week.

Q. Is it piece work? A. Yes.

Q. It depends on how much you do? A. Sure.

Q. What was your occupation before December
6312 20th, 1926? A. Spencer Kellogg Company.

Q. How long had you been working there? A. About six months.

Q. At Spencer Kellogg, what wages were you getting? A. What do you mean?

Q. What were you getting there? A. Thirty-three sixty.

Q. Before you went to Spencer Kellogg, where had you been working, if at all? A. Different places, you know. In the Morgan Bank downtown.

NORA MCEACHIM, claimant, being duly sworn, testified as follows: 6313

Direct examination by Mr. Jayne:

Q. How old are you? A. Twenty-seven.

Q. How do you pronounce your name? A. McCa-han.

Q. Were you married? A. Yes.

Q. What was the name of your husband? A. Henry McEachim.

Q. How old was he at the time of his death? A. He was twenty-eight.

Q. How old were you at that time? A. I was twenty-six. 6314

Q. How old are you now? A. Twenty-seven.

Q. When is your birthday? A. In December. I will be 27 in December.

Q. You are 26 now, that's right? A. Yes.

Q. At the time of his death he was 28? A. Yes.

Q. How many years was he older than you? A. He was two years older.

Q. Is this the marriage license? A. Yes, sir.

Q. What was the date when you were married? A. The 25th of December.

Q. What year? A. 1920.

Q. Where were you married? A. In Hope 6315 County.

Q. Where? A. Raeford.

Q. Who married you? A. Rev. A. Graham.

Mr. Jayne: I offer the certificate in evidence.

(Marked Claimant's Exhibit A.)

I also offer a letter written by Spencer Kellogg & Sons Co., Inc., showing that he worked for Spencer Kellogg.

(Marked Claimant's Exhibit B.)

6316 Q. How much did he receive while working for Spencer Kellogg? A. Twenty-eight eighty per week.

Q. When did he start working there? A. In October.

By the Commissioner:

Q. What year? A. The year of the accident.

By Mr. Jayne:

Q. When was the last day he started for work
6317 there? A. December 20th.

Q. 1926? A. Yes.

Q. Did he start to work as usual that morning? A. Yes.

Q. With his working clothes on? A. Yes.

Q. Did you ever see him again? A. No.

Q. Did you recover his body? A. No.

Q. Or receive any evidence of where his body was? A. No.

Q. Was he in good health? What type appearing man was he? A. A tall stout man.

Q. Stout or slender? A. He was stout.

6318 Q. How much did he weigh? A. About 180, somewheres about that.

Q. Was he ever sick while you lived with him? A. No, he was always well. Sometimes he had a cold.

Q. During your marriage, what did he ever buy for you? A. He bought a house for me.

Q. Where is the house located? A. In Southern Pines.

Q. What State? A. North Carolina.

Q. Describe the home? A. A house and lot.

Q. What kind of a house, two story? A. One 6319
story house.

Q. A bungalow? A. Yes.

Q. How many rooms? A. Five rooms.

Q. Do you know how much it cost him? A. About seventeen hundred dollars.

Q. At the time of his death did he still own the house? A. Yes.

Q. In whose name was it? A. In his name. Henry McEachim and wife.

Q. In both your names? A. Yes.

Q. How long had you been north? A. About five or six months I think.

6320

By the Commissioner:

Q. Did you have any children? A. One child.

Q. How old is the child? A. The child died.

Q. Since your husband died? A. No, before he died.

Q. Have you the deed to the house you speak of? A. I have it home.

By Mr. Jayne:

Q. When are you going back? A. As soon as 6321
you are through with me.

Q. Will you mail up the deed? A. Yes.

By the Commissioner:

Q. Is there any mortgage on the house? A. Five hundred dollars, since his death.

By Mr. Jayne:

Q. At the time of his death was it clear? A. Yes.

6322 By the Commissioner:

Q. You own the house today? A. Yes.

Cross examination by Mr. Hagen:

Q. Prior to your husband's death, did you go out and do general housework? A. No.

Q. Didn't you ever work for a family by the name of Reid? A. He worked there and I assisted him. I never hired out.

Q. Didn't you and your husband go out to various families and work out together, he would
6323 do the general work around the place and you assisted in the house? A. Not every day, only when he was in a rush, my husband was a cook.

Q. What else did you do besides that? A. That was all. I never worked out in day work service.

Q. You helped him? A. Yes, as his assistant.

Q. Assistant-cook? A. Yes.

Q. You did that quite frequently? A. Not often except when he was in a rush.

Q. Tell me some of the places he worked as cook? A. He cooked in North Carolina.

Q. Whereabouts? A. Southern Pines.

6324 Q. At what place? A. In a hospital.

Q. Do you know the name of it? A. Pine Crest Manor.

Q. Have you been working there since? A. No.

Q. Tell me some of the places he worked out around New York? A. The only two places in New York were in Yonkers.

Q. With Mr. Reid? A. Yes.

Q. Give me the name of the other place? A. The Kellogg Company.

Q. Spencer Kellogg Company? A. Yes. 6325

Q. Do you know what his pay was with Mr. Reid? A. No, I don't remember what it was.

Q. Have you any idea? A. Over a hundred dollars clear expense a month.

Q. I have before me a record of the Charity organization which shows——

Mr. Jayne: I object to that on the ground that it is putting in evidence.

The Commissioner: What does it bear on?

Mr. Hagen: I want to ask her if this statement is true. 6326

Mr. Jayne: I object.

The Commissioner: Can't he bring out anything on cross examination?

Mr. Jayne: Yes, but he can't put in evidence.

Mr. Hagen: I will show that in the course of the investigation it was found that she was employed.

The Commissioner: I will let him prove she was employed.

Mr. Jayne: I don't want him to ask her about any record he has from the Charity organization. 6327

By Mr. Hagen:

Q. Were you interviewed after the accident by members of the charity organization? A. Yes, they came to see me.

Q. Do you recall the name of the lady who came to see you? A. I don't remember the name.

Q. Do you remember a Mrs. Topp who came to see you? A. No.

6328 Q. Do you recall any conversation you had with that lady? A. No, I don't remember.

Q. Do you remember telling her you were employed before your husband's death? A. No.

Q. You now wish to deny you were regularly employed before your husband's death in service of any kind? A. No, I wasn't employed.

Q. Did you ever work in a beauty parlor? A. No.

Q. Do you know a Mr. G. McCann? A. Garland McEachim.

Q. A man who ran a beauty parlor? A. Yes,
6329 my brother-in-law has that name.

Q. Did you ever work for him? A. No.

Q. Have you been married since the accident? A. No.

Q. Do you live in that house in Southern Pines? A. No, I live with my sister.

Q. You rent the house out? A. Yes.

Q. What is the income of that house? A. Two and a half dollars a week.

Q. Where did you live at the time your husband disappeared? A. 271 West 135th Street.

Q. Were you keeping house separately? A. No, we were rooming.

6330 Q. Were you cooking your own meals? A. Yes

Q. Can you tell me about how much the meals of yourself and husband cost you? A. About twelve or fifteen dollars a week.

Q. A fair estimate of his expenses would be about half of that for his meals? A. Yes.

Q. Have you any idea how much he spent for clothing? A. About thirty-five or forty dollars every two months.

Q. How much did you say he gave you? A. He turned his pay over to me after his expenses was paid, I received what was left.

Q. What expenses would he pay? A. We had 6331
room rent.

Q. He paid the room rent? A. Yes.

Q. How much was that? A. Twenty-eight a month.

Q. Would he pay for the meals or you? A. He gave me the money for the meals.

Q. Do you know how much he spent for his own personal expenses? A. About five dollars. Do you mean a week outside of his meals?

Q. Yes? A. Three or four dollars a week.

By Mr. Jayne:

6332

Q. Was your husband a drinking man? A. No, he didn't get drunk.

Q. He never became intoxicated? A. Not that I know of.

Q. He had good habits—did he smoke? A. Yes.

Mr. Jayne: I offer the letters of administration issued to Nora McEachim.

(Marked Claimant's Exhibit C.)

6333

MARION THIGPEN, claimant, being duly sworn testified as follows:

Direct examination by Miss Robinson:

Q. Where do you live? A. 434 Bank Street, Newark, N. J.

Q. What relation were you to Carlos Thigpen? A. Brother.

Q. Did he have any other name, or did he go

6334 under any other name beside Carlos Thigpen? A. Yes, he worked under the name of C. Victor.

Q. Have you the check given to you by Spencer Kellogg? A. Not with me, I turned it in to be cashed.

Miss Robinson: I ask the Commissioner to take notice of the check that was offered in the limitation proceedings of Spencer Kellogg for a week's wages.

Q. How old was your brother? A. Twenty-six.

Q. When did you last see him alive? A. The
6335 Thursday before the twentieth, that Monday the boat sank.

Q. Have you ever seen him alive since that date? A. No, I didn't.

Q. Do you know where he had been working up to December 20th, 1926? A. Yes, in Edgewater for Spencer Kellogg.

Miss Robinson: At this point I ask the Commissioner to take notice of the pay-roll in the Limitation Proceedings with the name of C. Victor on it as of December
6336 18th, 1926, and the number of his clock being 591, as marked "Pressman" and the rate of wages seventy cents an hour.

Q. Was the body of your brother ever recovered? A. It never was.

Q. Was any of his clothing recovered? A. Yes.

Q. What was that? A. I had a hat, it was found in the river, I found it at the 100th Street Station.

Q. What is your occupation? A. Police officer.

Q. In what State? A. In New Jersey.

Q. In what Precinct? A. Fourth. 6337

Q. Have you the hat here with you? A. Yes.

(The witness handed a hat to Miss Robinson.)

Q. This is your brother's hat? A. Yes.

Q. You swear this is the hat of your brother? A. I cannot swear that is the hat of my brother, the people he lived with said it was.

Q. When did you first learn that your brother was missing? A. The boat sank on Monday and I was called up on Tuesday.

Q. Who called you up? A. The people he 6338
lived with.

Q. What did they tell you?

Mr. Hagen: I object to that.

By Miss Robinson:

Q. What was the nature of the conversation?

Mr. Hagen: I still object.

The Commissioner: Objection sustained.

By Miss Robinson: 6339

Q. Did you make a search for his body? A. I did.

Q. Where? A. I went to report it to the Missing Persons Bureau, Police Headquarters and went to the Morgue and stayed there all afternoon.

Q. Do you mean Bellevue Morgue? A. Yes and I couldn't find him there. I came back the next day looking for him in the Morgue again. I was

6340 called up a couple of times from Newark to go over to West New York and look at some bodies there.

Q. Did you find him at West New York? A. I didn't find him.

Q. Was your brother married or single? A. Single.

Q. Where was he living at the time of his death? A. 25 Edgecombe Avenue.

Q. Do you know with what family he was living? A. Jones.

Q. Whom did your brother leave surviving beside yourself? A. Seven brothers, three sisters,
6341 a mother and father.

Q. Are your brothers and sisters married? A. All but one brother.

Q. How old is he? A. Twenty-five.

Q. Is he working? A. He is working now.

MARION THIGPEN, claimant, recalled, testified as follows:

Re-direct examination by Miss Robinson:

6342 Q. I asked you to bring the clothes that you recovered at Spencer Kellogg and Sons, did you bring them? A. Yes, I did.

Q. Are those the clothes? A. That's them.

(The witness identified a bundle of clothes which Miss Robinson referred to.)

Q. Will you tell me where you got those clothes? A. Out of C. Victor's locker at Spencer Kellogg.

Q. Is this the hat you took out? A. Yes, it has the initials "C. T." in it. 6343

Q. Is this a suit consisting of a pair of pants and a jacket? A. Yes.

Q. Was this wallet also taken out of the locker? A. Yes.

Miss Robinson: I want this all marked for identification.

Mr. Hagen: I object to that as it is immaterial.

Miss Robinson: His hat is marked "C. T." and here's a wallet with a picture of Carlos Thigpen. 6344

Mr. Hagen: I don't see that they are material.

Miss Robinson: Yes they are as bearing on the identity. These things tend to show the identity of the two, it is not a conclusion.

The Commissioner: It is some evidence as bearing on the identification, I will take it.

By Miss Robinson:

Q. Were these documents that I show you among the papers that you took from the locker of C. Victor? A. Yes, they came out of the leather wallet. 6345

Miss Robinson: I want the three licenses marked.

Q. Was this leather case in the locker too? A. Yes.

6346 Mr. Hagen: I enter the same objection.

The Commissioner: The same ruling, I will take it.

(The license #46894, marked Exhibit 1.)

(The license #376547, October, 1925, marked Claimant's Exhibit 2.)

(The license #46894, June 14th, 1926, marked Claimant's Exhibit 3.)

By Miss Robinson:

6347 Q. Did you ever see your brother wear this suit?

(Miss Robinson referred to a tweed suit which Mr. Thigpen had produced.)

A. Yes.

Q. Did you ever see your brother wear this hat, with the initials "C. T."? A. Yes.

Miss Robinson: I also offer these things in evidence.

6348 (The leather wallet, marked Claimant's Exhibit 4.)

(The hat containing the initials, marked Claimant's Exhibit 5.)

(The tweed suit, marked Claimant's Exhibit 6, the coat being marked 6-A and the pants, 6-B, 10/15/28.)

ANNIE MAY JONES, a witness on behalf of Marion Thigpen, claimant, being duly sworn, tes- 6349
tified as follows:

Direct examination by Miss Robinson:

Q. Where do you live? A. 309 West 148th Street, New York City.

Q. Are you married? A. Yes.

Q. Is your husband living with you? A. Yes.

Q. Was he living with you in December, 1926? A. Yes.

Q. Did you have one living with you by the name of Carlos Thigpen? A. Yes.

Q. For how long had he been living with you? 6350
A. About two or three months.

Q. When did you last see him alive? A. On the morning of December 20th.

Q. 1926? A. Yes, 1926.

Q. Did he used to take his lunch with him every day? A. Yes.

Q. Did he take his lunch, or did you give him his lunch on December 20th, 1926? A. Yes, I did.

Q. Did he tell you, or did you have any conversation, as to where he was going? A. He was going to work.

Q. Is that what he said to you? A. Yes.

Q. What time did he leave? A. About six 6351
o'clock.

Mr. Hagen: I want the exact conversation.

The Commissioner: You can bring that out.

Miss Robinson: That's a perfectly good conversation, she can testify as to what he said to her.

6352 Q. Have you ever seen him since December 20th, 1926? A. No.

Q. Were his clothes or some of his clothes in his room after December 20th, 1926? A. Yes.

JULIUS MARTIN, claimant, continued his testimony as follows:

Direct examination by Miss Robinson:

Q. What time in the morning was that? A. Six o'clock.

Q. Did he tell you where he was going? A.
6353 Going to work.

Q. Did he leave alone or did you go with him? A. I go with him to the elevator station.

Q. What station? A. Ninth Avenue.

Q. What street? A. Fiftieth Street.

Q. Have you ever seen him since December 20th? A. No.

Q. Had your father been working at Spencer Kellogg? A. Yes for about three years.

Q. Right up to the date of the accident? A. Yes.

Q. Was his body ever recovered? A. After two months.

6354 Q. Who buried your father's body? A. The Company.

Q. Who do you mean? A. Spencer Kellogg & Sons.

EVA LABIAK, claimant, being duly sworn, testified as follows:

Direct examination by Miss Robinson:

Q. Where do you live? A. 38 Fort Washington Avenue, New York City.

Q. What relation was Victor Kaminsky to you? 6355
A. A brother.

Q. Was he living with you up to December 20th, 1926? A. Yes, he lived with me.

Q. How long had he been living with you? A. Since I bring him from the other side.

Q. How long was that? A. I guess about three years.

Q. Where had he been working do you know, during those three years? A. He working by the "Linseed King".

Q. How long had he been working by the "Linseed King"? A. I don't know, I didn't 6356
counted how many months.

Q. Did you see him on the morning of December 20th? A. Yes, I see him, sure.

Q. What time did you see him? A. Half past five.

Q. Did he say where he was going? A. Yes sure.

Mr. Hagen: I wish to enter the same objection. The matter of intent is not an issue of this case.

Miss Robinson: When a person expresses an intention to go a place and a disaster 6357
happens, it is assumed he perished in the disaster.

The Commissioner: Isn't that true?

Miss Robinson: I can cite cases on that point.

Mr. Hagen: I wish you would refer to one.

Miss Robinson: Yes, the *Matter of San Raphael,* 149 Fed. Rep. 894, 141 Fed. Rep. 270.

6358 (Miss Robinson read part of the decision.)

Mr. Hagen: I don't object to the testimony of a disinterested person.

Miss Robinson: But in the case I referred to the man told his own son.

Mr. Hagen: It comes back again as to the competency of the witness.

The Commissioner: I understand when a man perishes in a disaster and he has expressed an intention of going to that very place——

6359 Mr. Hagen: How about the seven year period. How long after the disaster was that case you referred to tried?

Miss Robinson: I don't know, I think about four or five years, but where there is a catastrophe you don't have to wait for the seven year period.

Mr. Hagen: Miss Robinson do you know of any case where, on the unsupported testimony of an interested person it has been presumed the man lost his life in a certain disaster?

6360 Miss Robinson: When I get back to the office I will get a whole list of cases, that is a well established rule.

Mr. Hagen: I will enter the same objection as heretofore to similar evidence.

The Commissioner: Objection overruled.

By Miss Robinson:

Q. Where did he say he was going? A. He was going to work.

Q. Where was that? A. In New Jersey.

Q. Have you seen him since the morning of December 20th, 1926? A. No I don't see him. 6361

Q. Did you make inquiry for his body? A. Yes.

Q. Where did you make inquiry? A. Every hospital and I looked where I take the boat out. Every place where they sent me I was look around. They sent me from the Court all over so I went and look around.

Q. Did you go over to Spencer Kellogg in New Jersey? A. No I don't went to New Jersey, no, 'cause I don't know which way to go.

Mr. Hagen: I meant to enter an objection to the question and answer if it is not too late—the answer to the question as to where he was going is merely a conclusion, that he said he was going to work, I don't think she has a right to draw conclusions from the conversation she had. 6362

Miss Robinson: The Commissioner can draw the conclusion.

The Witness: Yes, he's working, he got the pay there yet.

Mr. Van Hagen: She hasn't mentioned Spencer Kellogg once, she said he was working "By the 'Linseed King'". 6363

Miss Robinson: She cannot speak English very well, she doesn't know the difference.

The Witness: I can't speak very well.

By Miss Robinson:

Q. Tell us exactly what your brother did say to you when he went out? A. When he did the work?

6364 Q. No, when he went out on December 20th, 1926, what did he say? A. He said he goes to work.

Q. Did your brother contribute to your support while living with you? A. What?

RAYMOND BOYER, claimant, being duly sworn, testified as follows:

Direct examination by Miss Robinson:

Q. Where do you live Mr. Boyer? A. 160 Bleecker Street, West Side, Mills Hotel, New
6365 York City.

Q. How were you related to Ernest Boyer? A. He was my brother.

Q. Do you know where he had been working prior to December 20th, 1926? A. Spencer Kellogg &. Sons.

Miss Robinson: You have his name on the pay-roll Mr. Hagen.

Mr. Hagen: Yes.

By Miss Robinson:

6366 Q. What was his occupation, do you know? A. Laborer, he was cleaner around the shop.

Q. Where did he work before Spencer Kellogg & Sons? A. In a flour factory on the east side.

Miss Robinson: It was the Hecker-Jones Jewell Flour Company, we are getting the records.

Q. Where did he work before that? A. On the dock for the Pennsylvania Railroad.

Q. Was that Pier 29? A. Yes.

MARY MARTIN, claimant, being duly sworn, testified as follows: 6367

Direct examination by Mr. Kennedy:

Q. About how old was Eric Martin? A. He was twenty-seven.

Q. You were the wife of Eric Martin? A. Yes, sir.

Mr. Hagen: I object to that as calling for a conclusion.

The Commissioner: I think that's the kind of a conclusion that's alright.

Mr. Hagen: If she can prove she is married, that's one thing. 6368

The Commissioner: I don't think that is conclusive on you, you can raise the question. I think the question is proper.

By Mr. Kennedy:

Q. How long did you live with Eric? A. Two years.

Q. Where did you live? A. 70 West 127th Street.

Q. When did you see him for the last time? A. On the 20th of December, he left home at six o'clock. 6369

Q. The twentieth of December, what year? A. 1927, the morning that the boat went down, he left home at six o'clock to make the seven-thirty boat across the River.

Q. What time did he usually leave? A. He usually left home by six o'clock.

Q. Do you know where he had been working before this accident? A. Yes.

6370 Q .Where? A. He had been working a place in Long Island, I haven't the address, a cafeteria. I could get the address from his brother.

Q. On the day of the accident he left? A. Yes, sir, at six o'clock that morning.

Q. Did he tell you where he was going? A. He always went to work.

Q. Did he tell you where he was going that morning? A. Yes, sir, he told me he was going to work.

Q. Did he tell you where? A. Yes, he did.

Q. Where? A. The Spencer Kellogg, he was
6371 a presser there.

Q. Do you know whether he went alone or did anyone go with him? A. His brother saw him that morning, he left the house alone.

Q. What is his brother's name? A. Wilfred DeBethan.

Q. Martin? A. No, Wilfred DeBethan.

Q. His half brother? A. Yes.

JUNIUS JOHNSON, a witness on behalf of Mary Martin, claimant, being duly sworn, testified as
6372 follows:

Direct examination by Mr. Kennedy:

Q. Where do you live? A. 580 St. Nicholas Avenue.

Q. At the time of the sinking of the "Linseed King" where did you live? A. 110 Edgecombe Avenue.

Q. Did you know Eric Martin? A. Yes, sir.

Q. How long did you know him before the

"Linseed King" went down? A. About four 6373
months I guess before that.

Q. Where from? A. I met him in Spencer Kellogg.

Q. What did you do at Spencer Kellogg? A. Laborer in the press room.

Q. What did Eric Martin do there? A. Labor work in the press room.

Q. The day the "Linseed King" went down, did you see him? A. Yes.

Q. Where did you see him first on that morning? A. The foot of 95th Street.

6374

FELIPE DURATE, Claimant, being duly sworn, testified as follows:

Direct examination by Miss Robinson:

Q. Where do you live? A. 203 West 117th Street, New York City.

Q. Are you married or single? A. Married.

Q. Have you any children? A. Not now.

Q. Were you on the boat, on the "Linseed King" on the morning of December 20th, 1926? A. Yes.

Q. Will you tell us what happened to you after 6375
the boat started to sink in the river, tell us in your own way what happened to you? A. What happened to me?

Q. Yes? A. What happened to me—I had to swim on the river.

Q. Did you jump out of the boat or how did you get out? A. The boat turned like this (indicating a complete turn with his hands), I was in the middle, the boat turned over, I was hold up the pipe and the bottom go up in the roof.

6376 Q. The boat turned upside down, is that what you mean? A. Yes, I hold up the pipe and hit at the window until it break and I get out.

Q. Where did you go? A. I go up to the water, and swim.

Q. Were you swimming? A. Yes.

Q. How long do you estimate you were in the water? A. I guess about an hour and ten minutes.

Q. Were you rescued? A. What?

Q. Did anybody save you? A. No.

Q. Who saved you? A. A little boat.

6377 Q. Where did they take you? A. To Columbus Hospital.

Q. How long did you remain in the Columbus Hospital? A. I don't remember exactly, three or four days I think.

Q. Tell us, when you were in the water did you feel any pain? A. Sure.

Q. Will you describe where you experienced the pain? A. All over in my toes and knees and all over.

Q. Did you have any pain while in the hospital? A. Sure.

Q. What kind of pain and where was it? A.
6378 Like rheumatism, all over, feel cold.

By the Commissioner:

Q. Tell us what kind of pain and where you had it? A. All over.

By Miss Robinson:

Q. How did you feel? A. I feel so cold.

Q. Did it hurt? A. Sure it did, I had it in my hand and in my knee.

Q. Anywhere else? A. No. 6379

Mr. Hagen: I move to strike that out, it isn't responsive.

By Miss Robinson:

Q. Where did it hurt you? A. On the hand.

Q. Is that the only place? A. Yes and the knee, right behind the knee.

Q. Where did you go when you left the hospital? A. To 59 Perry Street, my old home.

Q. How long did you remain home? A. I was there about three or four weeks. 6380

Q. Did you have any doctor? A. Sure I was having a doctor.

Q. Do you know the name of the doctor? A. I don't know because my lawyer took me up there.

Q. Were you able to go to work after those three weeks, were you strong enough to work? A. No.

Q. When did you first start to go to work? A. In April.

Q. April, 1927? A. Yes.

Q. Where did you go to work, where did you first start to work in April? A. In Long Island.

Q. What is the name of the company? A. Carpets—Brown Renovation Company. 6381

Q. Do you know the street it is on? A. I guess it's Reiger Street.

Q. In Astoria, Long Island? A. Yes.

Q. How long did you remain there? A. I don't remember how long I was there, I worked until in the summer.

Q. All through the summer? A. Yes.

Q. What were you getting there, how much a

6382 week? A. I get twenty-five to twenty-seven dollars.

Q. A week? A. Yes.

Q. When you left this carpet company, where did you go to work? A. In the subway.

Q. The I. R. T.? A. No.

Q. The B. M. T.? A. No, the new construction that's started, I don't know what it is.

By the Commissioner:

Q. On Eighth Avenue? A. Yes, that's Jackson Avenue, Long Island.

6383

By Miss Robinson:

Q. How long have you been working there? A. I started there in August.

Q. Of this year? A. Yes, this year.

Q. What were you doing between the time you left the carpet company and this construction company, were you working? A. After I get out of the carpet company I can't work.

Q. When did you leave the carpet company? A. When it started winter, I feel so cold I don't want to work because I don't feel so good, then

6384 I left.

Q. Is that why you didn't go to work? A. Yes.

Q. For whom had you been working on December 20th, 1926? A. For the "Linseed King".

Q. Where were you working? A. In Jersey.

Q. Do you know the name of the company? A. Spencers Kellogg—yes?

Q. How long had you been working at Spencer Kellogg? A. I was working there about six months.

Q. What were you earning at Spencer Kellogg? 6385
A. What?

Q. How much were you getting, how much wages? A. Thirty-three sixty.

Q. A week? A. Yes.

Q. What are you getting at the subway company? A. I get seventy cents an hour, it goes about eight hours a day—thirty-three sixty.

Q. The same as at Spencer Kellogg? A. Yes.

By the Commissioner:

Q. What is the name of your lawyer that sent you to the doctor? 6386

Miss Robinson: White is the name of the doctor.

Q. How old are you? A. Twenty-six now.

By the Commissioner:

Q. Did you have a family? A. Yes sure I had a family.

Q. Have you a child? A. No.

Q. You just got a wife? A. Yes.

Q. You never had any children? A. Not yet. 6387

Cross examination by Mr. Hagen:

Q. After the accident did you go back to Spencer Kellogg to look for another job? A. No, sir.

Q. Did you ever go over and ask for a job? A. Never.

Q. Did you ask for your job back again? A. Never.

JOSE RAYAS, a witness, called on behalf of
6388 Francesca Gomez Castro, Claimant, having been duly sworn, testified as follows, by Gabriel Marques, an interpreter who had also been previously duly sworn.

Direct examination by Miss Robinson:

Q. Where do you live? A. 1219 Willow Avenue, Hoboken, New Jersey.

Q. For whom are you employed? A. With the Spencer Kellogg plant.

Q. How long have you worked for Spencer Kellogg & Sons? A. Four years.

6389 Q. Are you still employed with them? A. Yes.

Q. Did you know Juan Castro? A. Yes.

Q. How long have you known him? A. 1921.

Q. Where did you first meet him? A. In Texas.

Q. Did you know Francesca Gomez Castro? A. Yes.

Q. How long? A. Since 1921, same as Mr. Castro.

Q. Who introduced you, if anybody? A. Mr. Castro.

Q. Where did he introduce you? A. Borlos,
6390 Texas.

Q. What if anything did he say when he introduced you, what did he say? A. I introduce you to my spouse.

Q. Did you see them in New York? A. Yes.

Q. Where? A. 793 Washington Street.

Q. By what name did Juan Castro hold out his spouse?

Mr. Hagen: I object that is immaterial.

A. He presented her as Francesca Castro.

Q. Did Juan Castro work with you at Spencer Kellogg & Sons? A. Yes. 6391

Q. Do you know anything about the habits of Juan Castro? A. To some extent, on account of the time I knew him.

Q. Was he industrious as far as you know? A. He was industrious, he worked all the time.

Q. When did you last see Juan Castro? A. One day before he died.

EMMA GONZALES NAVAS, claimant, being duly sworn, testified as follows (by Emil Nunez, an interpreter): 6392

EMIL NUNEZ, was duly sworn as an interpreter for the witness, Emma Gonzales Navas.

Direct examination by Mr. C. C. Marsh:

Q. Where do you live Mrs. Gonzales Navas? A. 227 East 121st Street, New York City.

Q. Were you a sister of Marcus Gonzales Navas? A. Yes.

Q. Did you live with him at the time of his death? A. Yes. 6393

Q. When did you last see your brother before his death? A. December 20th in the morning.

Q. Did he leave you at the house where you were on that day? A. Yes.

Q. About what time? A. At six o'clock in the morning.

Q. Did he say anything about where he was going when he left the house? A. He told me he was going to work to an oil factory.

6394 Q. Did he give you the name of the oil factory? A. No, he just said oil factory.

Q. Did he say how he was going there? A. Yes, he told me he was going on a boat.

Q. Did he tell you where the boat was he was going on? A. He told me it was in the river, he had to cross the river.

Q. Was there anybody else living with you and your brother at the time he died? A. My sister and her children.

Q. What was the name of your sister? A. Maria Lena.

6395 Q. Her last name? A. Gaitan.

Q. How many children did she have at the time of your brother's death? A. Four.

Q. Can you give us their names and ages at the time your brother died? A. Leonore 9; Lucy 7; Alvaro 5, Robert 17 months.

Q. The ages you have given were they the ages at the time your brother died or the ages now? A. Those are the ages at the time of my brother's death.

Q. What source of income did you have or what income did you have prior to your brother's death? A. Nothing except what he gave us that's

6396 all.

Q. What source of income did your sister have? A. The same.

Q. Then do you say your brother supported you and your sister and your sister's children at the time of his death? A. Yes.

Q. How much did he contribute? A. All that he earned from $38.00 to $45.00 per week.

Q. What work did your brother do to earn this money? A. He worked in the Interborough and at night he worked in garages overtime.

Q. When did he leave the Interborough? A. December 4th. 6397

Q. Did he do any work for any oil company after December 4th? A. No.

Q. Then he was not working for any oil company when he went to take the boat on December 20th? A. He was going to work at the factory.

Q. He was going to begin work on that day? A. He went there Saturday and they told him to come back Sunday and there was no work and he went back on Monday.

Q. Did they tell him to come back and he would get work, if there was any work, or what did they tell him, or what did he tell you they told him? A. They told him to come back and he would work. 6398

Q. Did you see his body after he died? A. Yes.

MARIA GAITAN, a witness, on behalf of Emma Gonzales Navas, being duly sworn testified as follows (by Emil Nunez, an interpreter):

Direct examination by Mr. Marsh:

Q. Where do you live? A. 227 East 125th Street, New York City. 6399

Q. Do you live with your sister Emma? A. Yes.

Q. Were you living with your sister Emma and your brother Marcus at the time of his death? A. Yes.

Q. Did he contribute or pay anything to the support of you and your children up to the time of his death? A. Yes.

6400 Q. How much did he contribute? A. He took his weekly salary and gave it to us.

Q. About how much was it? A. He earned from $38.00 to $45.00 per week.

Q. How long had he been giving his salary to you? A. Since we arrived here.

Q. Did he send any money to you before you arrived? A. Yes, ever since my husband died he started sending it.

Q. When did your husband die? A. October 15, 1925.

Q. Did you have any source of income other than what your brother gave you before he died
6401 and after your husband's death? A. No because we didn't work.

Q. You did no work up to the time of your brother's death? A. No.

Q. Why didn't you work after your husband died and before your brother died? A. I didn't work after my husband died because in Columbia girls don't work.

Q. Are the four children with you now in the room, your children? A. Yes.

Q. Are those the children that were supported by your brother up to the time of his death? A.
6402 Yes.

Cross examination by Mr. Hagen:

Q. Have you another brother besides Marcus? A. No.

Q. Where did you come from before you came to the United States? A. Columbia.

Q. What city? A. Bogota. We lived with my husband in Bogota, Bogota is the capital of Columbia.

Q. Do you remember whether a badge with number 3152 was found on your brother when his body was found? A. I don't know. 6403

Mr. Hagen: At this time I would like to call the Commissioner's attention to the Police Record which is part of the record at the trial, to the effect that among the effects of Marcus Gonzales was found a pay check of Spencer Kellogg & Sons Company, with number A-3152.

Q. Do you know who your brother was working for when he died? A. He worked for us. 6404

Q. Do you know the company he worked for? A. He was going to work in the Spencer Company.

By Mr. Marsh:

Q. Did you see your brother the morning before he died? A. Yes.

Q. Did he say anything to you about where he was going? A. Yes.

Q. What did he say? A. He said he was going to work to an oil factory and had to take a launch to cross the river. 6405

Q. Had he been over to the oil factory before the day he died? A. Yes.

Q. When? A. Sunday.

Q. Did he say anything to you on that day? A. When he got home he told me there had not been any work that day.

Q. Where did you get the money from to come to this country?

Mr. Hagen: I object to the question as being immaterial, and irrelevent.

6406 The Commissioner: Is there any dispute that he worked for Spencer Kellogg & Sons Co., Inc.?

Mr. Marsh: Our information is that he went there on Sunday, was told to come back Monday morning. There was no work on Sunday, and might be work on Monday and so he went back and was never actually employed.

6407 MAY AMLAW, claimant, being duly sworn, testified as follows:

Direct examination by Miss Robinson:

Q. You are the widow of Roy Amlaw? A. Yes.

Q. When were you married? A. June 21st, 1921.

Q. Where? A. Manchester, New Hampshire.

Q. Have you the marriage certificate with you? A. Yes.

6408 (The witness produced a marriage certificate which was handed to Mr. Hagen, for inspection.)

Mr. Hagen: I will concede that Mrs. Amlaw was duly married.

By Miss Robinson:

Q. Were there any children born of the marriage? A. No.

Q. How old are you? A. Forty-seven.

Q. How old was Mr. Amlaw? A. Forty-two.

Q. Were you living together with your husband prior to December 20th, 1926? A. Yes. 6409

Q. When did you last see him? A. A quarter of six, the twentieth of December, 1926.

Q. Had he been employed or was he working for Spencer Kellogg at the time? A. They hired him.

Q. Was he working at the time? A. He was not.

Q. Did he say where he was going when he left on the morning of December 20th? A. He said he was going down to unload the boat.

Q. When did he make application for employment? A. Friday. 6410

Q. Was he told to come back? A. He was told to come back, the boat didn't get back and they told him to come back Monday morning.

Q. Did he do any work when he went over to apply for a position on Friday? A. No.

Q. On Saturday—for Spencer Kellogg? A. No.

Q. On Sunday? A. No.

Q. He didn't do any work on Monday? A. No.

Q. At no time did your husband work for Spencer Kellogg? A. No he did not.

Q. Did you ever receive any money from Spencer Kellogg for any wages or any other thing for Mr. Amlaw? A. No. 6411

Q. Was his body recovered? A. Yes.

Q. Where did you find it? A. Down at the Morgue.

Q. What morgue? A. Way downtown, I don't know.

Miss Robinson: I ask the Commissioner to take judicial notice of the fact that in the Limitation Proceedings there is evidence that the body of Roy Amlaw was recovered.

6412 Q. Had he been regularly employed during his lifetime? A. Yes.

Q. What were his average earnings? A. Sixty-six dollars per week.

Q. What was his occupation? A. Plumber.

Q. Was he a union plumber? Did he belong to the union? A. Yes.

Q. During his lifetime and during your marital relations did he contribute to your support? A. Yes, everything.

6413 ANNIE MURPHY, claimant, being duly sworn, testified as follows:

Direct examination by Miss Robinson:

Q. You are the widow of Andrew S. Murphy? A. Yes.

Q. When were you married? In Ireland.

Q. When? A. The 21st of September, 1911.

Q. Do you have your certificate here? A. No. I took it down in a book.

Q. You took it in a book? A. Yes.

6414 (The witness produced a slip of paper on which appeared a record in her own handwriting.)

Q. Where did you take this from? A. From a book I had it in.

Q. Where is the book? A. At home.

Q. You better sent that book. Is it a Bible entry? A. No, just a book I keep things in.

By the Commissioner:

Q. Is it loose in the book? A. Yes.

By Miss Robinson: 6415

Q. What part of Ireland were you married in? A. In the County of Monahan—Bella Bay—County Mayo, Castle Bayney.

Q. Was it a church wedding? Yes.

Q. What church were you married in? A. In the Presbyterian Church, Castle Bayney.

Q. What year? A. 1911.

Q. Were there any children born of the marriage? A. No.

Q. Did you have any children? A. One with him.

Q. How old is that child? A. Fifteen. 6416

Q. At the time of your husband's death he was about 13? A. No, a little more.

Q. How old are you? A. Forty-three.

Q. How old was your husband at the time of his death? A. Forty-one.

Q. When did you last see him? A. On Monday when he went out.

Q. December 20th, 1926? A. Yes.

Q. Were you living together with your husband and child? A. Yes.

Q. What time did he leave? A. Half past five.

Q. Did he state where he was going? A. He told me was going up to the "Linseed King". 6417

Q. Have you ever seen his body? A. Yes.

Q. Was his body recovered? A. Yes. It was taken out six times for me, I went down and saw the people.

Q. Was his body recovered from the river? A. Yes.

Q. Did you pay for the burial of your husband? A. I did.

Q. Have you the bill? A. Yes.

6418 Q. May I have it, please? A. The undertaker is James A. Murphy, 154 East 29th Street, New York City.

Q. How much did you pay for his burial? A. Here is the bill.

Miss Robinson: I offer the bill of James A. Murphy, undertaker, to Mrs. Annie Murphy for $176.00 receipted, to cover the burial expenses of Andrew Murphy.

(Offered in evidence, received and marked Claimant's Exhibit 1.)

6419 Q. Was your husband working for Spencer Kellogg? A. No.

Q. Did he apply for a position? A. Yes, on Saturday.

Q. Was he hired on Saturday? A. Yes.

Q. What was he told? A. He was told to come on Monday.

Q. Did you ever get any money from Spencer Kellogg for any work he did? A. No.

Q. So far as you know he never worked for Spencer Kellogg? A. No.

6420 Q. He was going over on December 20th to get a job? A. Yes.

Q. To get work? A. Yes.

Q. Had your husband been regularly employed up to his death? A. No, he was home three days.

Q. But prior to that he had been working right along? A. Yes.

Q. Did he support you and your child? A. Yes.

Q. How much did he contribute to your support? A. Thirty dollars a week.

Q. Did he leave any property at the time of his death? A. No. 6421

Q. Did he have any other source of income except what he earned by his labors? A. No.

Q. You were appointed administratrix of your husband's estate? A. Yes.

Miss Robinson: I offer the Letters of Administration on the Estate of Andrew S. Murphy, issued to Annie Murphy, in the Surrogate's Court of New York County.

(Offered in evidence, marked Claimant's Exhibit 2.) 6422

Q. You are not working now? A. No, I can't work with my hand.

Cross examination by Mr. Hagen:

Q. Mrs. Murphy, where had your husband been working before he went to Spencer Kellogg? A. In a restaurant.

Q. What was the name of the restaurant? A. I don't know that. They were Jewish people.

Q. Where was that restaurant? A. I think it was thirty-third or forty-third, some place there. 6423

Q. What sort of work did he do? A. Every kind of work, whatever he was put to.

Q. General work around the place? A. Yes.

Q. Cleaning up and everything—he wasn't a dish-washer? A. No.

Q. Not a waiter? A. No.

Q. He wasn't a cook? A. No.

Q. He did general work? A. Yes.

6424 Q. He usually did general work—general labor work? A. Yes.

Q. How long had he worked there? A. I don't know—quite some time.

Q. Can you give me some idea—a year or less than that? A. I don't think it was a year—I don't know it is so long since.

Q. Do you know the name of anybody he worked for except Spencer Kellogg? A. I don't—no.

Q. Do you know the name of any person he worked for other than Spencer Kellogg? A. No.

Q. Had he worked in a good many different
6425 places? A. Not so very many, he kept a job a good while.

Q. When did you come to this country? A. The week after we got married in 1911.

Q. Tell us what sort of a place you lived in at the time your husband died? A. 503.

Q. 503 what? A. 503—we had 3 nice rooms there. 503 West 19th Street.

Q. What floor was it on? A. The first floor.

Q. You don't know anything your husband did, other than work for Spencer Kellogg? A. No.

Q. Did he ever run a store? A. Yes, for a short while.

6426 Q. What kind of a store? A. A grocery store and candy.

Q. Where was that? A. In 19th Street.

Q. The same address? A. No—further up, between 9th and 10th Avenue.

Q. How long since he quit that store? A. Quite a long time—over three years.

(At this point, Max Gelles, attorney for the claimant Carl Bremer, appeared.)

CARL BREMER, claimant, being duly sworn, testified as follows:

6427

Direct examination by Mr. Gelles:

Q. Mr. Bremer, where do you live? A. 220 York Street, Jersey City.

Q. On December 20th, 1926, where were you, on the "Linseed King" that went down in the Hudson River? A. Yes, sir.

Q. What did you do when the ship sank?

Mr. Hagen: Let us avoid as much as possible of the details of the accident.

Miss Robinson: I want that in.

6428

By Mr. Gelles:

Q. What happened to you? A. I was in the boat, somebody said "There's an accident."

Q. What did you do? A. There was one man standing at the motor and he said "Break the door open."

Mr. Hagen: Is this necessary? Let us avoid as much of this as we can.

By Mr. Gelles:

6429

Q. What did you do? A. I came out of the boat and looked for help there and I saw nothing and I go in the water. I saw the boat was down in the front and I went right away in the water.

Q. When you jumped in the water did you go in over your head? A. Yes.

Q. What did you do, did you swim around? A. I swim around, I caught a couple of ice cakes and they break in the center right away, after I catch a big ice cake and get up there.

6430 Q. How long did you stay in the water, before you got on the ice cake? A. About ten minutes.

Q. How long did you stay on the ice cake before you were rescued? A. Over a half hour.

Q. From one-half to three-quarters of an hour? A. Yes.

Q. Who picked you off the ice cake? A. The tug boat.

Q. Where were you taken? A. They took me over to the 125th Street and put me in an ambulance and took me to the hospital.

Q. Where were you taken to? A. To the Har-
6431 lem Hospital.

A. At Lenox Avenue, New York City? A. Yes.

Q. How long were you in the hospital? A. Two days.

Q. Then you went home? A. Yes.

Q. While you were in the water and on the ice cake how did you feel, did you feel any pain? A. They were cold and I was hoarse.

(The witness answered some of the questions in German which were interpreted by Mr. Hagen.)

6432 Q. Did you feel any pain while you were in the hospital? A. Yes, I got a cold.

By the Commissioner:

Q. Did you have any pain? A. Yes.

By Mr. Gelles:

Q. What did you get? A. Later in my foot I got rheumatism and last Fall I got a big foot, I was over to the doctor.

Q. How long after the accident did the rheu- 6433
matism come on? A. About two months.

Q. Did the rheumatism continue, how long did you have the rheumatism? A. About last Spring I feel it, last Spring.

Q. Have you got it yet? A. Yes, the last couple of days in my foot.

Q. How often do you feel pain in the foot? A. Every couple of weeks.

Q. When the weather changes? A. Yes.

Q. After you left the hospital did you go home? A. Yes.

Q. When you went home what did you do? A. 6434
I rest.

Q. How long did you stay away from work after the accident? A. Five weeks.

Q. Were you able to work during the five weeks? A. No.

By Mr. Hagen:

Q. Why didn't you work? A. I was tired and I had cold.

By Mr. Gelles:

Q. Did you feel any other pain during that 6435
time besides the cold and you say you were tired, anything else? A. I got it in my legs the rheumatism.

Q. You didn't work for five weeks after the accident? A. No.

Q. What work did you do before the accident? A. I was on a street car in Middletown Avenue.

Q. As a conductor? A. No.

6435 Q. What then? A. In the street.
Q. Paving? A. Yes, on the tracks.

By the Commissioner:

Q. Helper? A. Yes.
Q. How much did you earn? A. Twenty-seven dollars a week.
Q. For five weeks you were home you didn't earn any money, did you? A. No.

By Mr. Gelles:

6437 Q. Can you tell the Court anything else you suffered or felt by reason of the accident, any pain or suffering besides what you have already described? A. My clothes were all covered with ice and I trembled afterwards.
Q. How long after did you feel the trembling? A. I feel it steady.
Q. Did you get that often? A. Yes.
Q. Did you have that before the accident? A. No.

By the Commissioner:

6438 Q. How old are you? A. Thirty-one.
Q. How old were you when the accident occurred? A. Twenty-nine.
Q. Are you married now? A. Yes.
Q. How long are you married? A. Three years.
Q. Before the accident you were married? A. Yes.
Q. Have you any children? A. No.
Q. How old is your wife? A. Thirty-four.

Mr. Gelles: I offer the record of his confinement in the hospital.

By the Commissioner:

Q. What was the name of the doctor that attended you at the hospital? A. I don't know.

By Mr. Gelles:

Q. After you went back to work what work did you do? A. I worked on a cemetery on a mausoleum.

Q. What did you do, what kind of work? A. I mix cement and bring some tools over.

By the Commissioner:

Q. A helper? A. Yes.

By Mr. Gelles:

Q. Have you been doing that work since you went back to work? A. Yes. Last winter I was eight weeks home.

Q. You were laid off? A. Yes.

Mr. Hagen: I object as to what happened to him last winter.

Mr. Gelles: I will withdraw the question.

Q. You say after you were able to go back to work you went to work on the cemetery? A. Yes.

Q. How much did you get a week? A. Thirty-three dollars a week.

Q. How long did you continue to do that work? How many months? A. For five months after that I was sick.

Q. For five months you were getting thirty-three dollars a week? A. Yes.

6442 Cross examination by Mr. Hagen:

Q. Mr. Bremer, after you left the hospital what doctor did you have? A. I got no doctor, I got no money.

Q. You had no doctor? A. No.

Q. You had no doctor examine you after you left the hospital? A. Yes, last fall.

Q. I mean immediately after you left the hospital? A. No.

Q. Who was you doctor before, did you ever have a family doctor? A. No, I was healthy.

Q. You had no doctor since the accident except-
6443 ing last Fall? A. No.

Q. You didn't pay anything at Harlem Hospital? A. No.

Q. You didn't pay any doctor there? A. No, last Fall only.

Q. Do you remember a gentleman coming to see you after the accident? A. Yes.

Q. How much money did he bring you? A. Thirty dollars.

Q. That was one week's pay? A. No, I lost my things.

Q. Where were you when they paid you this
6444 money? A. I was on the other side, to the company.

Q. Did they pay you with a check? A. Yes, they pay me with a check.

Q. Do you remember talking to this gentleman, Mr. Garber? A. I don't know.

Q. Do you remember him calling on you on December 27th? A. I was a day over, I don't know what day.

Q. That was when you were at the Spencer Kellogg place? A. Yes, I was over, I asked for my clothes.

Q. You had your clothes over there at their plant, didn't you? A. I lose them. 6445

Q. Did you see Mr. Garber over at the plant? A. I don't remember.

Q. Do you remember speaking to a young lady at the plant? A. Yes.

Q. Do you remember telling the young lady that when you left the hospital you were terribly hoarse? A. Yes.

Q. You said, did you not, "I cannot talk but otherwise I am all right", didn't you tell her that? A. No.

Q. Didn't you tell her you were feeling all right then? A. No. 6446

Q. Did you tell the young lady over at Spencer Kellogg that you didn't want to go back to work because your wife was nervous? A. Yes, my wife was nervous.

Q. That was why you didn't go back to work? A. I tell you I stay home, I took after that an easier job.

Q. You told her you were looking for an easy job? A. I say I look for any easy job, I got after that a cold again.

Mr. Hagen: I move to strike that out as being volunteered. 6447

The Commissioner: Yes, that was volunteered.

Q. Did you say you didn't tell the young lady that you were feeling well, that you were all right then? A. No, I told her I would take an easy job if I find it after a couple of weeks.

Q. Did you go to see the doctor that they had there? A. Yes.

6448 Q. In the company? A. No—no.

Q. You knew they had a doctor there? A. No, nobody told me.

Q. Did a doctor look at you at the hospital, did he examine you? A. Yes.

Q. How many days were you there at the hospital? A. Two days.

Q. Who told you you could go from the hospital? A. The doctor.

Q. What did he tell you? A. I went home for Christmas.

Q. What did the doctor tell you? A. He asked
6449 me what was the matter.

Q. Did you tell him you felt all right? A. I felt hoarse.

Q. You said you felt hoarse? A. Yes, and I was nervous. I saw the horrible sight when the boat went down and I saw them all drowning and it made me nervous. I was the last one on the boat, the front of the boat was way down.

Q. How long did the nervousness last, how long were you nervous? A. I still have it, whenever I think of the accident.

Q. What is the name of the people that you went to work for, after the accident? A. Frank
6450 Burger.

Q. Where is his place of business? A. His place of business is over in Jersey.

Q. In what town? A. Hoboken or Weehawken.

Q. Where is it that you were working in the cemetery, in what cemetery? A. Over in Brooklyn.

Q. What is the name of the cemetery? A. A mausoleum on Myrtle Avenue—Cypress Hills.

Q. When did you go to work for Burger? A.

About February, the last day in January, I don't know, about five weeks. 6451

Q. You started to work for him at thirty-three dollars a week? A. Yes.

Q. Who was the doctor you last had? A. I was to an institution on 24th Street, I think it was Bellevue, I had a swelling on my foot and he wanted to open it but I think it is rheumatism and then I went to Brooklyn to a doctor.

Q. Do you know the name of the doctor in Brooklyn? A. I don't know his name, it might be Koch.

Q. Where is Dr. Koch, where does he have his office? A. Freshpond Road. 6452

Q. Do you know his first name? A. No.

Q. What is it you say Dr. Koch wanted to do to your foot? A. He didn't do anything, he prescribed something to me and told me to come back but I didn't go back, then I went to a lady doctor, I don't know her name.

Q. Where does this doctor live, what street? A. In Brooklyn.

Q. How long ago was this you saw the lady doctor? A. It was that time after—about a year ago.

Q. What did she do? A. She said I should massage it. 6453

Q. How long after you left the hospital did you first see a doctor? A. About seven or eight months.

Q. Have you worked for anybody else except Mr. Burger since the accident? A. I was working first for him and after that he left the job and goes over to Jersey to another Mausoleum and I work for Mr. Romalou Teutessi.

6454 Q. Where is his place of business? A. In Long Island.

Q. What City? A. Long Island City, a stone yard.

Mr. Hagen: As you know Mr. Commissioner, we were to let the personal injury claims go to the end and I am not prepared to take up any at this time and I would like to ask that you direct this man to return if it is necessary.

The Commissioner: That is alright.

Mr. Gelles: Just let me know and I will produce him.

6455

By Mr. Hagen:

Q. How long had you been working for Spencer Kellogg? A. I never worked for them.

Q. You went over on Friday did you? A. On Friday, yes.

Q. You got a card, or ticket with a number on it? A. No.

Q. Didn't you tell the young lady at Spencer Kellogg's, that "I went to Spencer Kellogg's plant on Thursday and I was told to come back Friday, is that true?" A. Yes, I was over on Thursday.

6456

Q. Then were you told to come back on Sunday? A. Yes, I came back on Sunday.

Mr. Gelles: Do you refer to the Sunday before the accident?

Mr. Hagen: Yes.

Q. On Sunday you were told to come back at 6:30 Monday morning and that a boat would be in to unload? A. They told me to come Monday back again.

Q. And that you would work on a boat? A. No. 6457

Q. You would work around the dock? A. Yes maybe they put me on the boat, I don't know.

Q. What did they tell you Sunday? A. He told me nothing, no boat was in and everybody goes back again.

Q. Didn't he tell you to come back at 6:30 Monday? A. Yes.

Q. And at 96th Street there would be a boat? A. Yes.

Q. When you came over to Spencer Kellogg didn't they give you a little check with a number on it so you could get your job? A. No, I don't know. 6458

Q. What did they give you so you could get your job? A. Nothing at all.

Q. A piece of paper? A I came to the boat and the captain told me there was no work but I should come back again

By Mr. Gelles:

Q. When was that, what day? A. Either Thursday or Friday.

By Mr. Hagen: 6459

Q. How did you happen to go over there to look for work? A. I met a German fellow.

Q. He told you? A. Yes.

Q. When you went over to Spencer Kellogg after the accident, did they give you a check for thirty dollars? A. Yes.

Q. You told this young lady, Miss Bradley, "I am thinking of looking for work this week," didn't you tell her that? A. No, my wife told me

6460 that I should stay at home during the holidays, that is Christmas and New Years and I should spare myself.

Q. The reason you didn't look for work was because your wife didn't want you to go out? A No, I feel cold and nervous too.

Mr Hagen: I move to strike that out as not being responsive.

The Commissioner: You can draw that out Mr. Gelles.

Q. How long did your wife tell you not to work?
6461 A. After that I had a cold and I stay home of my own accord.

Q. You did go to work the end of January? A. That's right.

By Mr. Gelles:

Q. Mr. Bremer what work were you going to do for Spencer Kellogg? A. He said nothing about what work I was to do he said come back tomorrow, that's all he said.

Q. You were there for the first time on Thursday before the accident? A. Yes.

6462 Q. What time of the day did you go there, what time was it? A. In the afternoon.

Q. Where did you go to the office? A. To the office.

Q. Where is the office in New Jersey? A. Yes.

Q. How did you go over there? A. With the boat.

Q. With the same boat, the "Linseed King"? A. Yes I went on the boat, right away, there were waves on the Hudson and the boat was shaking and I look right away around for life preservers and look to the window.

Q. When you got across to Jersey on Thurs- 6463
day, did you see anybody there at the office? A. Yes.

Q. Did you see a man or a girl? A. A man and a girl.

Q. Did you speak to anybody there? A. Yes, I asked him for work.

Q. What did he say? A. No.

Q. Did he say to come back? A. No, the captain told me that.

Q. The captain from the "Linseed King" told you to come back the following day? A. Yes.

Q. You didn't get paid for Thursday? A. No.

Q. What time did you go back Friday, the 6464
next day? A. Between nine and ten in the morning.

Q. Did you go on the "Linseed King"? A. Yes.

Q. You went across to the same office? A. Yes.

Q. When you got there did you see the same man? A. Yes.

Q. Did you ask him for work? A. Yes.

Q. What did he say? A. He said, "Come back tomorrow".

Q. You didn't do any work Friday? A. No.

Q. When you went back on Saturday you went the same way? A. Yes.

Q. Did you see the man in the office on Sat- 6465
urday? A. No.

Q. Did you see anybody? A. All the people run around and say no boats came in, go back.

Q. Were you going to unload the boat? A. I don't know, nobody told me that.

Q. They told you to come back Sunday? A. Yes.

Mr. Hagen: Mr. Gelles, please don't lead the witness.

6466 Q. How did you go over on Sunday? A. On the boat.

Q. What boat? A. The "Linseed King".

Q. Where did you go, in the office? A. No, on the dock.

Q. Did you see anybody? A. No, go right back again.

Q. You went again Monday morning? A. Yes.

Q. That's when the accident happened? A. Yes.

Q. You didn't get paid for any day you went there before? A. No, I did not.

6467 Q. You said you received a check from the Spencer Kellogg Company sometime after the accident, is that right? A. Yes.

Q. Where did you get this check? A. In the office.

Q. On the other side? A. Yes.

Q. What did you go there for? A. Looking for my clothes.

Q. You told the man you lost your clothes, what did you lose? A. I lost one coat, over-alls and lunch-box.

Q. Did they then give you this check for thirty dollars? A. Yes, that time I was over.

6468 Q. When you got the check you took that in payment of your clothes?

Mr. Hagen: I object to that.

By Mr. Gelles:

Q. When you received this check what did you accept it for, what did you receive it for, what did you understand you were getting it for? A. I get it for my clothes.

Q. Did they tell you what they were giving it to you for? A. Yes, for the clothes. 6469

By Mr. Hagen:

Q. Who told you, who were you talking to, what is the man's name? A. I don't know and the lady was there too.

By Mr. Gelles:

Q. Who told you they were paying you for the clothes, the same party who gave you the check? A. Yes. 6470

By the Commissioner:

Q. Did the party that gave you the check, did he tell you what it was for? A. Yes.

Q. He told you it was in payment for your clothes? A. Yes.

By Mr. Hagen:

Q. Did you give them any bill showing how many clothes you lost? A. No I didn't give them any.

Q. Did you tell them what clothes you lost? A. Yes, a coat and a lunch box. 6471

Q. Did you tell them that? A. Yes I did.

Q. What did the man look like? A. A lady asked me.

Q. When Mr. Garber was there—do you remember Mr. Garber? A. When I saw this gentleman this afternoon he looked familiar to me but I don't recall where I did see him before.

Q. Where did you live at the time of the accident? A. 82nd Street.

6472 Q. Where, what is the address? A. 426 East 82nd Street.

Q. Did you have an apartment there or a room? A. Three rooms.

Q. Who was the landlord? A. I don't know what the name is.

Q. Did you live in the basement? A. No on the second floor.

Q. Did you live on the ground floor? A. Yes.

Q. What side of the apartment as you came in? A. In the rear on the right side.

6473 WILLIAM O'DWYER, Proctor for Mrs. Catherine Connolly appeared at this point by Mr. Drucker.

CATHERINE CONNOLLY, claimant, being duly sworn testified as follows:

Direct examination by Mr. Drucker:

Q. Are you the Administratrix of Thomas Anthony Connolly? A. Yes.

6474 Mr. Drucker: I offer the Letters of Administration issued to Mrs. Connolly as Administratrix of the Estate of Thomas Anthony Connolly.

(Offered in evidence, marked Claimant's Exhibit 1.)

Q. Are you the mother of Thomas Anthony Connolly who died on December 20th, 1926? A. Yes.

Mr. Drucker: I ask that the Commis-

sioner take judicial notice of the fact that the body of Thomas Anthony Connolly was recovered. 6475

Q. Did Thomas Anthony Connolly live with you at the time of his death? A. Yes.

Q. Where did you live at that time? A. 307 East 77th Street.

Q. New York City? A. Yes.

Q. Did you keep house for him? A. Yes.

Q. You are a widow? A. Yes.

Q. Beside yourself and Thomas Anthony Connolly did you have a son Patrick who lived with you there? A. Yes. 6476

Q. How many rooms did you have there? A. Five.

Q. Who took charge of the body at the Morgue? A. Mr. Farley.

Q. Did you see the body at the Morgue? A. No my son did.

Q. Who was the undertaker who took charge of the funeral? A. Thomas Farley.

Q. Is the amount of his bill $482? A. Yes.

Q. Is this the receipted bill for that amount? A. Yes.

Mr. Drucker: I offer in evidence the receipted bill of Thomas Farley issued to Mrs. Catherine Connolly. 6477

(Marked Claimant's Exhibit 2.)

Q. How old was Thomas at the time of his death? A. Twenty-seven.

Q. Was he in good health? A. Yes he was healthy.

6478 Q. What was his trade? A. He was a machinist.

Q. Where had he learned that trade? A. In Barondirsch, England.

Q. Do you remember the places he was employed at before his death? A. I cannot remember, haven't you it in the papers.

Q. Was he employed by the American Machine and Foundry Co.? A. Yes.

Q. In Brooklyn? A. Yes.

Q. Was he also employed by the Aluminum Company of America at Edgewater, N. J.? A. Yes.

6479 Q. Had he also been employed sometime before his death at the Stancourt Laundry Company? A. Yes a long time before his death.

Q. How much did he contribute to your support? A. Twenty-five dollars a week.

Q. Did he do that regularly? A. Yes.

Q. Do you have any other means of support except what he and your other son gave you? A. No.

Mr. Drucker: I desire to have it noted on the record that the name of the deceased is Thomas Anthony Connolly instead of Patrick Connolly as appears on the records of the Police Department.

6480

Mr. Hagen: From this it appears that among the effects of the deceased was $4.51 United States currency, a pay check of Spencer Kellogg No. 3101——

Miss Robinson: Inasmuch as Mr. Hagen has objected to anything in those records except that it certifies as to the deaths, I object to this going in evidence for anything except as showing his death.

Mr. Drucker: I object to it too. 6481

Mr. Hagen: It is already in evidence.

Miss Robinson: It is in only for the purpose of showing the death.

Mr. Drucker: I offer the death certificate in evidence.

(Marked Claimant's Exhibit 3.)

Q. Do you know whether at the time of your son's death he was employed by the Spencer Kellogg & Sons Co.? A. No he was going in, he had no badge.

Q. Was he employed by them, was he working 6482
for them? A. He said he was going to work that day, he was to be put on, I don't know any more.

Q. Did he have any badge that you know of? A. No.

Mr. Hagen: I desire to enter the same objection as to what he told her, that is all hearsay.

The Commissioner: Mr. Drucker that is hearsay, how can you make it evidence?

Mr. Hagen: I move to strike it out.

The Commissioner: I want to be liberal 6483
but I don't want to lumber up the record, that is hearsay.

By the Commissioner:

Q. You had another son? A. Yes.

Q. Where did he work? A. He wasn't working for a long time before this.

Q. How old is he? A. Thirty or thirty-one years.

6484 Q. When he was working did he contribute anything to your support? A. Fifteen dollars a week.

Q. Was there any other member of your family at the time your son died that was contributing to your support? A. No.

Q. How old are you? A. About sixty-five years.

By Mr. Drucker:

Q. Do you know how much he earned a week when he worked? A. On the average of thirty
6485 dollars.

Q. Do you know how much he earned extra if he worked overtime? A. I don't know that.

Q. You say he earned about $30 per week regularly when he was employed as a machinist? A. More than that I think.

Cross examination by Mr. Hagen:

Q. You said he paid you twenty-five dollars a week? A. Yes.

Q. Out of that did you furnish him his meals?
6486 A. When he was home at night and in the morning, yes.

Q. How many were living at home with you? A. Him and his brother.

Q. And yourself? A. Yes.

Q. How much do you think your table cost you a week? A. I don't remember since I lost my son I hardly remember.

Q. When your son was lost you were living at what address? A. 307 East 77th Street.

Q. How large an apartment did you have there? A. Five rooms.

Q. Have you moved from there? A. Yes. 6487

Q. Where did you go to? A. Corona, with my daughter.

Q. Do you have to pay any rent there? A. Yes.

MARGARET BUTTICE, a witness on behalf of Catherine Connolly, claimant, being duly sworn, testified as follows:

Direct examination by Mr. Drucker:

Q. Are you a sister of the deceased? A. Yes. 6488

Q. At the time of his death did he live with your mother in New York City. A. Yes.

Q. Did you see him there whenever you visited your mother? A. Yes.

Q. Did you visit her frequently? A. At least every two weeks.

Q. Beside your mother and your brother Thomas did your brother Patrick live there too? A. Yes.

Q. Did your mother have any other means of support except what they contributed? A. No.

Q. Do you know whether your brother was employed by the Spencer Kellogg Company at the time of his death? A. He wasn't employed at the time of his death. 6489

Q. Do you know how he came to go to Spencer Kellogg? A. He read an ad in the newspaper and went over to see if the job was open on Sunday and they told him it wasn't, as no boat was in and on Monday there might probably be a boat in.

Mr. Hagen: I object to that as being purely hearsay.

6490 Cross examination by Mr. Hagen:

Q. Did your mother have anybody else beside, any roomers? A. No.

Q. Your mother said she lived with you, does she rent an apartment in Corona? A. Yes.

Q. Do you know what the rent is there? A. Thirty-five dollars.

Q. Is it a smaller apartment than she had? A. No, five rooms.

Q. Does Patrick live with her now? A. Yes.

Q. Do you live with her? A. No.

6491 Q. You have your own apartment? A. Yes.

Q. Would you be able to give us some idea as to what your mother's table expenses were at the time, per week? A. About forty dollars including laundry, for the table and light bills.

Q. That would be for the three of them? A. Yes, for running the house.

Q. Outside of the rental? A. Yes.

JAMES KEYS, a witness on behalf of the estate of Joseph Bassnet, being duly sworn, testified as follows:

6492 Direct examination by Miss Robinson:

Q. Did you know one Joseph Bassnet? A. I did.

Q. How long had you known him? A. Twenty years.

Q. When did you last see him alive? A. The night before the accident.

Q. On December 19th, 1926? A. Yes.

Q. Did any conversation take place between you and Mr. Bassnet? A. Yes.

Q. Will you state what the conversation was? 6493

Mr. Hagen: I object to the conversation he had with him.

Miss Robinson: He is not interested in the case.

Mr. Hagen: It is purely hearsay.

The Commissioner: I don't think he would be interested.

By the Commissioner:

Q. Are you in any way interested in this matter? A. No.

Q. Are you related to Mr. Bassnet? A. No. 6494

By Miss Robinson:

Q. Are you related to any of his family? A. No.

Q. Will you state what the conversation was? A. I got home the night before the accident and he showed me an advertisement in the Morning World, laborers wanted for Spencer Kellogg. He told me he was going up there to 96th Street to take the boat.

Q. When? A. The next day when the accident happened. 6495

Q. Have you ever seen him alive since December 19th, 1926? A. No.

Q. Have you ever seen his body after December 20th? A. Yes.

Q. Where did you see it? A. At the Morgue.

Q. Did you identify it? A. I did.

Q. Did you take care of the burial of it? A. I did. I went over to the Holy Name Mission in the Bowery and saw Father Rafferty and Father Rafferty said he would bury him.

6496 Q. You didn't pay anything? A. No. Father Rafferty did all that.

Q. You were appointed Administrator of his estate? A. Yes.

Miss Robinson: I offer the Letters of Administration issued to James Keys on the estate of Joseph Bassnet by the Surrogate of New York County on the 14th day of March.

(Marked Claimant's Exhibit 1.)

6497 Q. Do you know what the decedent's occupation was? A. He worked as a long-shoreman.

Q. About how much was he getting, do you know? A. Where he was working on the White Star Line he got eighty-five cents an hour.

Q. Did he ever work for any other company? A. In the Panama Railroad.

Q. In what capacity? A. Long-shoreman.

Q. What were his wages there? A. The same, eighty-five cents an hour.

Q. Do you know how long he had been working in the Panama Railroad? A. No.

6498 Q. Do you know how long he had been working for the White Star Line? A. No.

FREDERICK LUDWIG, claimant, being duly sworn, testified as follows:

Direct examination by Miss Robinson:

Q. Where do you live? A. 4360 Park Avenue.

Q. Are you married or single? A. Married.

Q. You were married on December 20th, 1926? A. Yes I am married for the last fifteen years.

Q. Let us have your age? A. I am forty-four 6499
past.

Q. Were you on board the "Linseed King" on the morning of December 20th, 1926? A. Yes.

Q. Tell us in your own way what happened to you when the launch struck ice? A. When I got aboard the launch she was pretty well filled up. When she left the pier I was not able to turn around in the boat. She ran along, I should judge she was out in mid-stream——

Mr. Hagen: That is not responsive.

Miss Robinson: I want it all in.

6500

A. —she got about mid-stream and the first thing I remember, there was a trembling under an impact and she careened to one side. My heart jumped up in my mouth. Some seconds later the boat shook again. There was a panic aboard amongst the men trying to get out. I dug my way through and was in the water before I got out. When I got out, I clutched a cake of ice, hung on for a while. The first thing I know I looked around, there appeared the pilot-house they hang lights on. I made for that, also a colored man was going for it at the same time. 6501
When I got hold of it the colored man had my coat but he lost his hold and when I turned around, he disappeared, he was gone. Finally I got on and hung on, got my leg around the pilothouse, got my leg in through the window as she was rolling from side to side. My thoughts were about my family, I thought it was all night for me. I don't know how long I was there but it seemed ages to me. The first thing I know——

Mr. Hagen: I don't want to start any

6502 more excitement but it seems there are things here the witness couldn't testify to, I want to enter an objection.

The Commissioner: I think he can state his experiences.

A. —I don't believe I could hang on very much longer. I was numb and getting powerless, until the tug-boat "Buffalo" came along and picked us up.

By Miss Robinson:

6503 Q. Have you any idea, within reasonable estimate, as to how long you remained in the water? A. I don't know, I know there was fellows on cakes of ice around me there, hanging on, some standing on, some lying on them. I don't know, I couldn't give the exact time, I would be telling an untruth if I did.

Q. Did you see any people drowning while you were there? A. Yes, two fellows I saw, one young fellow especially, he was on a cake of ice and rolled off when he made for the boat, he never got there. Another man I saw had a scar on his face, he made for the boat and never
6504 got there.

Q. Where were you taken when the tug-boat "Buffalo" rescued you? A. Columbus Hospital.

Q. How long did you remain there? A. I think three or four days.

Q. Where did you go after you left the hospital? A. I went home, my wife took me home in a cab.

Q. How long did you remain home? A. Due to the accident I was home nearly four weeks.

Q. How long did you remain home from work

after the accident? A. Four and a half months. 6505

Q. During that time did you receive any medical treatment? A. Yes, I had Dr. Fiske treating me.

Q. Was that Dr. Tracy L. Fiske? A. Yes.

Q. At 179th Street? A. Yes.

Q. While you were in the water and while in the hospital, did you feel any pain at all? A. Yes, my back is in bad shape.

Q. Did you feel any pain? A. Yes, my fingers were numb, and my legs, I was massaged when I got home, my back especially.

Mr. Hagen: That's not responsive. 6506

By Miss Robinson:

Q. Describe the pain you felt in the hospital and when you came home? A. I was all broke up, everything ached me.

Q. Describe your pain? A. It would be pretty hard to describe it.

Q. In what part of your body was it?. A. Mostly in my back, my legs were numb and my fingers.

Q. Describe the pain you felt while in the hospital, tell us just exactly where it was? A. 6507
When I got out of bed I fell down on the floor. I braced myself, knowing I would like to be home for Christmas.

Q. Where was your pain? A. Mostly in the back and legs.

Q. What kind of pain did you have when you came out of the hospital, during the four or five months you were home? A. My back was the most troublesome part of my body. Sometimes I sit on the chair, when I tried to get up

6508 I had to brace myself with my hands to pull myself up.

Mr. Hagen: The witness has never testified he had pains for four or five months, he said he was home for that time.

The Commissioner: I would rather have the doctor testify as to his condition. He can describe in a general way what his trouble was, he cannot state any conclusion as to the nature of his ailment.

Mr. Hagen: Miss Robinson was imply-
6509 ing by the question that he had these pains for four or five months.

By Miss Robinson:

Q. How long did you have pains? A. I have the pain to this day in my back.

Q. Did you ever work for Spencer Kellogg & Sons? A. No ma'am.

Q. Did you ever receive any money from them? A. No.

Q. Tell us what you were doing on the boat on the morning of December 20th, 1926, how
6510 did you happen to be on the boat, tell us in a brief statement. A. I was engaged as a longshoreman to unload boats.

Q. What were you doing on the morning of December 20th, you said you never worked for Spencer Kellogg. A. I was told to be at 95th Street pier at 6:30.

By the Commissioner:

Q. Had you applied for a position there? A. Yes.

By Miss Robinson:

6511

Q. Were you applying, or had you applied? A. I applied for a position and was engaged on a Saturday morning, two days before the accident.

By the Commissioner:

Q. Pursuant to that you took the boat? A. Yes.

By Miss Robinson:

Q. You never worked for Spencer Kellogg? A. No.

6512

Q. You never received any money from them? A. No.

Q. Will you tell us whether before December 20th, 1926 you ever had the same kind of pain you have spoken of, before the accident? A. No, not that I know of.

By the Commissioner:

Q. You would be likely to know? A. I never felt any pain in my back.

The Commissioner: Just answer the questions.

6513

By Miss Robinson:

Q. How do you feel now? A. I feel alright only when I go to do any heavy work or lifting, I dasn't do it, I can do light work.

Q. What was your occupation before December 20th, 1926? A. I was a handyman for the C. G. J. Realty Co., for a man named Mr. A. Schwartz.

6514 Q. What was your salary? A. As high as seventy-four dollars a week.

Q. What did it average? A. The average salary was seven dollars a day and overtime.

Q. What are you doing now? A. I am working for the Borden Farm Products Co.

Q. What is your salary there? A. Thirty-five dollars a week and overtime.

Q. Are you able to do the same kind of work you did before December 20th, 1926? A. No, I am not.

Q. Why can't you? A. I am not able to do
6515 any heavy work on account of my back.

By the Commissioner:

Q. Have you a family? A. Yes.

Q. What does it consist of? A. Four children.

Q. And a wife? A. Yes, sir.

Q. How old are the children? A. From six to thirteen and a half.

Q. During the time you got home, after you had been in the hospital, did you do any work? A. I done an odd job.

Q. Do you remember how much you earned? A. Yes, about nineteen dollars.

6516 Q. A week? A. No, on the jobs I done, this man felt sorry and said there was a chance for me to work a few hours to make a couple of dollars for easy work.

Q. How much did you average a week? A. I say I got about nineteen dollars.

Q. How many days in a week did you work? A. About two days altogether.

Q. In each week? A. No, not in each week.

Q. How old is your wife? A. She is thirty-four.

Cross examination by Mr. Hagen: 6517

Q. What was the name of the realty company? A. The C. G. J. Realty Co., Mr. Rosenberg is president.

Q. Where is it located? A. I cannot tell you, it has an office downtown here some place. Mr. Rosenberg is the president.

Q. What do you mean by handyman? A. I could pretty near lay my hands on anything and do it. Concrete work, bricklaying, plastering, carpentry work, anything like that, painting.

Q. Where were you working? A. Grand Avenue, north of Fordham Road. 6518

Q. Do you know the number of the house? A. 2240, something, I think.

Q. How long did you work there? A. For six and one-half months, the job finished on October 28th if I am not mistaken.

Q. After that where did you work? A. He said you go over to Mr. Schwartz, he has a contract he wants you to do. I went over to Mr. Schwartz and I had a job water-proofing a foundation wall.

Q. When did you go with Mr. Schwartz? A. The next day, I left Mr. Rosenberg and went on this job. 6519

Q. Is Schwartz connected with this company? A. No, I believe he lived in Mr. Rosenberg's house, he ran this other building.

Q. Tell us the address of where you worked? A. Those were new buildings, I worked for Mr. Rosenberg. Mr. Schwartz had a tenant on the ground floor on Perry Avenue.

Q. What number? A. I don't remember the number.

6520 Q. What is Rosenberg's first name? A. Charles if I am not mistaken.

Q. What is his address? A. He lived on Davidson Avenue, I haven't the number.

Q. Where did he employ you? A. I was employed by Mr. Fred Sigfried, Superintendent.

Q. You don't know the number of the places you were employed? A. I was employed on the job, where the buildings were going up, when they were up about a half a story.

Q. What was Mr. Schwartz's full name? A. I can't tell you; I knew him by Mr. Schwartz.

6521 Q. Where was his office? A. He lived in Mr. Rosenberg's house. Mr. Rosenberg recommended me to him to do this job.

Q. You don't know Mr. Rosenberg's address? A. I know the house but I don't remember the number.

Q. Did you say the C. G. J. Realty Company? A. Yes.

Q. There is a C. S. J. Realty Company on 28th Street, is that the concern? A. No, I think it is 40th Street.

Q. Is it still in existence? A. I don't know.

Q. Do you remember the 'phone number? A.

6522 I don't remember it.

Q. Did they have a 'phone? A. They had a 'phone number at the shanty in front of the building, that's all I remember.

Q. This was during the middle of 1926? A. This was in October, but I left there when I got through with Mr. Rosenberg, and he recommended me to Mr. Schwartz.

Q. Can't you tell me the location of the Realty Company? A. I was paid on this job by Mr. Sigfried, the superintendent, he paid me in checks.

Q. Can you give us the definite address of any

of the places you mentioned so far? A. Yes, Grand Avenue, a block north of Fordham Road, they started in May and were completed around the first or second of November. The tenants were in there then. 6523

Q. You don't know the number? A. Twenty-two something, I don't really know. I think it was 2240, 2238 and 2240. I don't look for any numbers, but I knew the buildings.

Q. Do you know how much you were to get at Spencer Kellogg when you were hired? A. I was hired as a long-shoreman.

Q. To unload the ship? A. Yes, sir.

Q. The salary was $28.80 per week? A. I don't really know if it was $28.80 per week, I can't say, nobody told me it was $28.80. 6524

Q. You answered the advertisement? A. Yes.

Q. In the ad it said forty-eight cents an hour? A. Yes, sir.

Q. Do you recall being interviewed by some gentleman from my office? A. At my house?

Q. Yes? A. There was a gentleman there, my wife spoke to.

Q. Do you recall speaking to him? A. I do.

Q. Do you recall showing him a time card number 3170? A. I showed him the card and my wife told him what doctor attended me and how many children I had, he wanted a lot of information and I told her to tell him and what doctor treated me and I said there's a card I got if you want any more information see my lawyers. That's what my wife told them too. 6525

Q. Do you recall telling him you usually worked as a laborer? A. He asked me what I done, I said laboring work.

Q. That's true, isn't it? A. I am handiman,

6526 that means I am handy at pretty near anything.

Q. What did you do before you went to work for C. G. J. Realty Co.? A. I worked for James J. Pregarthen & Sons.

Q. What were you doing for Pregarthen? A. I was storekeeper.

Q. What was your pay there? A. Thirty-nine dollars a week.

Q. How long after you left Pregarthen did you go to work for the realty company? A. One week.

Q. Can you give us definitely when you went to work for the Realty Company? A. I think it
6527 was between the first and fifth of May, or sixth of May if I am not mistaken.

Q. What do you do at Borden's? A. I am a handiman. I do painting and little patching up jobs.

Q. The same sort of a job you had for Rosenberg? A. No, not the same sort of a job.

Q. You described it the same? A. At Rosenberg's I had to do heavy work, lug timbers and beams, carry up cement and do heavy work, make crates for roofs and do heavy lifting.

Q. Now you have someone else do the lifting on your job? A. There is no heavy lifting.

6528 Q. What plant do you work at? A. 180th Street and Park Avenue.

Q. Who is your boss? A. Pritchard.

Q. When you worked for Pregarthen did you have any heavy work to do there? A. Yes.

Q. What did you handle there? A. Two hundred pound kegs.

Q. Of what? A. Of spikes and nails.

Q. Who did you work for at Pregarthen's? A. James A. Pregarthen he was the man I worked for, he was my boss.

Q. Did you work there under the name you are now using? A. Frederick Ludwig, yes. 6529

Q. In your interview you said you were treated by a doctor at 2021 Prospect Avenue? A. I didn't tell him no number, I said it was Prospect Avenue.

Miss Robinson: It is Prospect Avenue and 179th Street.

Q. Is that the same doctor? A. Dr. Tracy L. Fiske.

Q. How old did you say your wife was? A. Thirty-four. 6530

Q. Does she do any work? A. Yes, she works for a school teacher.

Q. What does she do, housework? A. Yes.

Q. What is your wife's pay? A. She earns sometimes six or eight dollars a week.

Q. Half time work? A. Yes, two and three hours.

Q. Do any of the children work? A. No.

Q. Are they all attending school? A. Yes, all attending school.

Q. Where did you work before you went to Bordens? A. I worked a couple of days.

Q. For whom? A. For a Mr. Paul Perpellier. 6531

Q. What is his address? A. Westchester and Zeriglier Avenues.

Q. How long after the accident did you start to work for him? A. Almost the latter part of February, that he said come over.

Q. The February following the accident? A. Yes.

Q. What did you do for him? A. He had a couple of toilets to be put in, he told me to

6532 finish them up. I was handy with the trowel and finished them up.

Q. You were working on the floor? A. On the cement, yes, they were small toilets.

Q. Did you try for any other jobs of that sort? A. Yes, I tried for jobs but couldn't get the work, I couldn't do it.

Q. Where did you apply for work in addition to this place? A. There was a man by the name of Fred Holste.

Q. Where was his place? A. On Middletown Road.

6533 Q. Did he have any work for you? A. Yes, he had work for me.

Q. What kind? A. Laboring work, on a building.

Q. Is that hod-carrying? A. No, it was on the cement foundation.

Q. What was that, cementing the foundation? A. Putting concrete in on the foundation.

Q. Laying the blocks? A. No, loose concrete.

Q. What sort of work would that have been? A. Cement finisher or concrete work.

Q. What do you actually have to do, shove the cement, or run the machine? A. Run it down in

6534 the wheel-barrow.

Q. Do you have to run it down to the mixer? A. From the mixer to the wall.

Q. Those kind of jobs you had as handiman? A. Yes, handiman's work.

Q. What is this man? A. He is a contractor.

Q. Are there any other places you applied for jobs? A. I didn't apply for them, no. After I got through on this other job I didn't apply, I wasn't able.

Q. Didn't you look around for an easy job?

A. I looked for an easy job yes, it was pretty hard to get an easy job when you couldn't do a heavy day's work nobody wants you. 6535

Q. Have you any pains today? A. I have pains, I don't have them right now but when I move to get up or try to lift anything and when I am laying in bed I cannot lay only a certain length of time, I have to turn over.

Q. Where are these pains? A. In my back here.

(A doctor present in the room said the witness indicated the lumbar region.)

Q. Is it a muscular pain? A. I cannot tell you. Sometimes it is like a knife running through my back. 6536

Q. Is it in the flesh part of the back? A. I can't tell you if it is the flesh or the bones.

Q. It isn't internal in the stomach? A. No.

Q. How are those pains compared with the pains you had in February? A. They compare pretty near the same.

Q. Your pains today are just the same as those you had in February? A. As the day I got off the job.

Q. They are as bad? A. Not really but I don't know when I am going to get the pain through me. 6537

Q. That was the same as in February? A. Yes the same as since the accident.

Q. Generally speaking the pains are just about the same? A. I feel it more in the damp weather or in the cold weather.

Q. You would say you are a little worse now than before? A. I wouldn't say it was worse.

Q. You would say you were better now than before? A. I am afraid to do heavy work.

6538 Q. You are about the same now as you were in February? A. About the same, yes.

Q. How long would you say you were out of work actually after the accident? A. About four and a half months.

Q. Are you still treating with Dr. Fiske? A. I went over to him, yes. He examined my back again. I had my back rubbed and massaged.

Q. When were you to him last? A. Some time ago, a couple of months ago.

Miss Robinson: The end of April, 1928.

6539 By Mr. Hagen:

Q. Were any x-rays taken? A. No, sir.

Re-direct examination by Miss Robinson:

Q. Did you apply for a job at Spencer Kellogg before Monday, December 20th, 1926? A. Yes.

Q. When was the first day? A. On Saturday morning.

Q. Did you start to work on Saturday morning? A. No, I was engaged on Saturday morning and told to come Sunday morning to work.

Q. What happened Sunday morning? A. The
6540 boats didn't arrive, Mr. McHale told us to be at 95th Street pier on Monday morning at 6:30.

Q. Did he say he expected the boat to arrive on Monday? A. He told us to be there at 6:30 Monday morning at 95th Street, the boat will be waiting for you, to take you to work.

By Mr. Hagen:

Q. He told all the Saturday men that, didn't he? A. I happened to be in the office when the time-keeper told us to see Mr. McHale.

By Miss Robinson: 6541

Q. You don't know who was there with you? A. No, I don't.

PEDRO MITCHELL, Claimant, being duly sworn, testified as follows:

Direct examination by Miss Robinson:

Q. What is your address? A. 25 West 136th Street.

Q. How old are you? A. Forty-four. 6542

Q. At the time of the accident how old were you? A. Forty-two.

Q. Are you married or single? A. Married.

Q. Were you on board the "Linseed King" on December 20th, 1926? A. Yes.

Q. Will you tell us what happened to you after you got on the boat? A. On the way to Jersey the boat struck ice, got full of water and went down.

Q. What happened to you? A. I went down in the boat and after I got up I held on the ice until the tug rescued me.

Q. How long were you in the water? A. An hour. 6543

Q. Where were you taken? A. To Knickerbocker Hospital.

Miss Robinson: Mr. Hagen, will you concede he was admitted on December 20th and discharged on December 26th, 1926?

Mr. Hagen: Yes, I will.

Miss Robinson: It is conceded on the record that he was admitted at the Knick-

6544 erbocker Hospital on December 20th, 1926 and discharged on December 26th, 1926. The diagnosis was submersion and exposure.

Q. Did you feel any pain while in the hospital? A. Yes.

Q. Where? A. Around my chest.

Q. Was that the only place you felt pain? A. Along in my back.

Q. How long did you remain home after you were discharged from the Knickerbocker Hospital? A. Quite a while, I don't remember how
6545 long.

Q. Have you done any work since December 20th, 1926? A. Three days.

Q. You have been out of work since December 20th, 1926? A. Yes.

Q. Why didn't you work? A. I was sick off and on. The month before last I was sick three weeks, in bed.

Q. What were you doing on the morning of December 20th, 1926 on the boat? A. I saw an ad in the paper and I went over to look for work and when I went over the time-keeper told
6546 me they wanted me to unload the ship and the ship wasn't in and he said to come back Sunday. I went back Sunday and he said no the ship wasn't in and to come back Monday.

Q. Did you get paid for those days you went back and fourth? A. No, I didn't.

Q. When did you work the three or four days you spoke of, after December 20th, 1926? A. I don't remember.

Q. How long after the accident was it? A. About three months.

Q. Somewhere around March? A. Yes.

Q. You worked for three days? A. Yes. 6547

Q. Where did you work those three days? A. For the same company.

Q. Before December 20th, you had never worked for them? A. No.

Q. You worked for them in March, 1927? A. Yes.

Q. For three days? A. Yes.

Q. Why didn't you continue to work there? A. The doctor stopped me and said I wasn't able to work.

Q. He told you not to work? A. Yes.

Q. Who told you? A. That's the message I received from the nurse in the office, that the 6548
doctor told her to tell me I was unable to work, that I should stop work.

Q. Did you have the same pain you describe before December 20th, 1926? A. No.

Q. What kind of work did you do before December 20th?

Mr. Hagen: The witness hasn't said what kind of pain he had, it's just general. He can tell us what his symptoms were.

By Miss Robinson:

Q. What sort of pain did you have? A. In 6549
my heart and around through my back, my heart fluttered. Sometimes I can't lay on my stomach, if I do, I spit blood and it comes through my nose on the pillow. I cannot write with a pen at all because of my nerves. I can show you some of my writing before that and now. I didn't speak this way before the accident either.

By Mr. Hagen:

Q. You are having trouble with your speech?

6550 A. Yes, a man who speaks this way could never be a mate. I worked on a boat before.

Q. Your eyes bother you too? A. Yes.

By Miss Robinson:

Q. What were your earnings before December 20th, 1926? A. From sixty to seventy-five dollars a week, in the contracting business in Flatbush, for Benjamin Hitchin.

Q. You were a contractor? A. Yes.

Q. Are you able to do contracting work now? A. No.

6551 Q. Were you able to do it since December 20th, 1926? A. No.

Q. You were examined by various doctors that I sent you to? A. Yes.

Miss Robinson: I will get the doctor's letter, I think it was Dr. Powers.

Cross examination by Mr. Hagen:

Q. Were you examined by Dr. Cooperman at Spencer Kellogg, when you came back? A. I don't know the name of the doctor.

6552 Q. You were examined by the company doctor? A. Yes.

Q. Do you remember him giving you a blood test? A. I don't remember it.

Q. Right after the accident, in March? A. I was examined every week over there.

Q. Sometimes they took blood tests? A. Yes.

Q. After a while the nurse told you they didn't want you working there any more? A. The nurse said the doctor told her I was unable to work. They didn't tell me my trouble.

Q. Did any other doctor tell you what your trouble was? A. No. 6553

Miss Robinson: We have the report, they sent it to us.

By Mr. Hagen:

Q. You say you have trouble with your eyes? A. Yes.

Q. How long has that been coming on? A. A couple of months.

Q. Didn't you wear glasses at the trial? A. Yes. 6554

Q. You were having trouble with your eyes at the time of the trial? A. My eyes are pinching all the time I cannot stand the blaze of light or sun.

Q. You say your nerves bother you? A. Yes.

Q. How about your feet? A. My whole body is nervous.

Q. How do your feet feel? What sort of feeling do you have there? A. I have feeling there.

Q. Do they sometimes feel numb? A. Yes, sure.

Q. Do you have much trouble walking? A. Sometimes. When it's up I have to stretch it up, it gets tight. 6555

Q. You don't have any control of the nerves of your feet and legs? A. No.

Q. Do you have difficulty walking upstairs in the dark? A. If I am going up I have to step all the time.

Q. You have to watch your steps as you go? A. Yes.

Q. You have to see the step before you can step on it? A. I cannot see the step in the dark.

6556 Q. You have difficulty in the dark? A. Yes.

Q. Have you had an X-ray of your chest? A. Yes the doctor Mr. Axtell sent me to.

Miss Robinson: I will have everything when the doctor comes here.

By Mr. Hagen:

Q. When you left the Knickerbocker Hospital did you sign a release or a paper there? A. Downstairs in the office.

Q. You signed a release did you? A. Yes.

6557 Q. That you wanted to go out? A. No, I asked the doctor could I go home. I asked him and he said I must wait another day and on Monday he let me go. I asked him one day and he let me go the next.

Q. You signed something in the office as you went out? A. Yes.

Q. Is this your signature on this paper? A. Yes.

Q. Is this your signature on this paper? A. Yes.

Mr. Hagen: I would like to offer in evi-

6558 dence the first paper which I have shown him.

Miss Robinson: Before it goes in evidence I want to examine him.

Re-direct examination by Miss Robinson:

Q. Do you identify this signature as your own? A. Yes.

Q. Did you ever read this? A. No and no one read it to me. I cannot read English very well.

Q. No one read this to you? A. No. 6559

Q. Do you know you were signing a General Release when you signed it? A. I don't know what I signed.

Q. Didn't you know you were signing away all your rights when you signed this thing? A. No.

Q. Did anyone tell you to sign it? A. No.

Q. What did they tell you? A. I was sick and they put the paper on the desk and told me to sign it and I would have done anything at that time.

Q. Do you know what this means: "Know all Men by these Presents, that Workmen's Compensation is accepted in lieu of and in full settlement and satisfaction of all claims that I, my heirs or assigns now have, ever had or may have from the beginning of the World to date, due to the Sinking of the 'Linseed King'." A. What do they mean by that? 6560

Q. I don't know, if you don't know. No one ever read that to you? A. No one ever read it no.

Q. No one asked you to read it? A. No.

Q. Did you ever go to school in the United States? A. No.

Q. This is also your signature? A. Yes. 6561

Q. And this is your signature down here? A. Yes.

Q. What did they tell you to do when they asked you to sign it, did they read it to you? A. No.

Q. Did they read the part above this signature? A. No.

Q. Do you know what you signed? A. No.

Q. They just asked you to sign it? A. No.

Q. Didn't they read it to you? A. No.

Q. You didn't read it yourself? A. No. I

6562 can't read it because the time I would take to read it no one would wait that length of time.

Q. Do you know what this means: "The undersigned does hereby acknowledge the correctness of the statements on this blank and agrees to accept compensation at the rate given." A. No one ever told me about compensation.

Miss Robinson: I object to the form tendered in evidence by proctors for petitioner on the ground that the release and the signature which appears on both of the statements on these blanks was obtained by

6563 fraud.

The Witness: There was nothing read to me by no one.

The Commissioner: I will allow them to go in and give you an exception Miss Robinson. If it is a fact they were obtained by fraud that's an open question I presume I will have to decide. In the meantime I think I will allow these papers to go in.

(Marked Petitioner's Exhibits 1 and 2 respectively.)

6564

Miss Robinson: I object on the further ground that there was no meeting of the minds between the parties as to what the signature was for.

Mr. Hagen: That should go in the brief.

Re-cross examination by Mr. Hagen:

Q. Mr. Mitchell you received $255 from Spencer Kellogg at the time you received these? A. I don't know.

Q. Do you have trouble with your memory? A. 6565
Yes.

Q. Is your memory failing? A. That was too much of a fright.

Q. Is your memory getting worse? A. Yes.

Q. It's getting worse all the time? A. Yes.

Q. Is it worse now than three months ago? A. No.

Q. About the same? A. Yes.

Q. Haven't you any recollection of receiving $255 from Spencer Kellogg? A. No.

Q. Do you remember when these papers were showed to you you stated you didn't think $255 was enough? A. Nobody ever said anything to me 6566
about $255. I swear to Christ about that.

Q. Do you remember seeing these papers before? A. Yes, if I didn't see them I couldn't sign them.

Q. Who was there when you signed those papers? A. Mr. Aldrich.

Q. Was this gentleman Mr. Nelson there at the time you signed them?

(Mr. Nelson stepped into the room.)

A. He was in his office.

Q. Was he in the room when you signed those 6567
papers? A. No.

Q. You said you had some X-rays taken of your chest. As a matter of fact some of those were taken in Jersey weren't they? A. I was taken over to the X-ray in Jersey.

Q. The doctor from Spencer Kellogg's plant arrange to have those taken didn't he? A. Yes.

By the Commissioner:

Q. Are you married Mr. Mitchell? A. Yes.

Q. Have you a wife? A. Yes.

6568 Q. Any children? A. Not in this country.

Q. Where are they? A. I have five in my country.

Q. By your present marriage? A. No.

Q. By a former marriage? A. Yes.

Q. Is your former wife dead? A. We don't marry in my home.

Q. How old are the children? A. I don't know, I never kept a record of their ages.

(At this point an adjournment was taken to July 24th, 1928, at 10:30 A. M.)

6569

GENEVA SIMS, claimant, being duly sworn, testified as follows:

Direct examination by Mr. Jayne:

Q. How old are you at the present time? A. Twenty-seven.

Q. Where do you live? A. 1222 West Oxford, Philadelphia.

Q. When you were first married, how old were you? A. Twenty years old.

6570 Q. You had two husbands? A. Yes.

Q. How old were you when you married the first one? A. Seventeen.

Q. What was his name? A. Algie Neal.

Q. Where were you living when you married Algie Neal? A. 1633 North Alder, Philadelphia.

Q. Did you have any ceremony in marrying Algie Neal? A. Yes.

Q. What kind of a ceremony? A. I was married at the house by a minister.

Q. Did you have any children by that marriage? 6571
A. Yes.

Q. What are their names? A. Iola Catherine Neal and Thomas Algie Neal.

Q. What are their ages now? A. Seven years old and eight years old.

Q. How long did Algie Neal live with you, to the best of your knowledge? A. Two years.

Q. What happened to him, what was the outcome of that, did he go on living with you until his death? A. No, we didn't agree so well and I went home with mother. Then he went away and I didn't hear any more about him until he was in the Bellevue Hospital in New York. 6572

Q. What was the cause of your disagreement? A. He wouldn't work and I had the small children.

Q. You went home with your mother, what did she do? A. She took care of me.

Q. How did she take care of you? A. She has a restaurant.

Q. In Philadelphia? A. Yes.

Q. Where? A. 1222 West Oxford.

Q. How long had you been home with your mother when you met George Sims? A. About one and a half years, I can't remember the date. 6573

Q. Do you think you had been living with your mother and away from the husband you were married to, about a year and a half, when you first met George Sims? A. Yes, or about two years.

Q. Where did he live when you first met him? A. Where did George Sims live?

Q. Yes? A. 1635.

Q. Next door to where your mother lived? A. Yes.

6574 Q. Who was he living with there? A. With his mother.

Q. How did you meet him? A. By acquaintance, going out on the steps and talking.

Q. Did he come to live with you? A. Yes.

Q. Was your husband Algie Neal living at that time? A. Yes, but I didn't know where he was.

Q. As far as you know he was living but you didn't know where he was, is that right? A. Yes.

Q. At that time, when you and George started to live together where did you live? A. At 1633.

Q. At your mother's? A. Yes.

Q. You lived there with your mother? A. Yes.

6575 Q. Did George work then? A. He worked all the time.

Q. What did he work at then? A. He worked on the railroad.

Q. While you didn't hear from your husband and while living with George in your mother's home, did George support you? A. Yes, he did.

Q. When did you hear from your husband? A. When I heard anything I heard he was in Bellevue Hospital.

Q. Here in New York? A. Yes.

Q. After you heard he was in the Bellevue Hos-

6576 pital, that was under his own name so far as you know? A. Yes.

Q. Where did you next hear about him and what did you hear? A. The next time I heard anything at all, I heard he had a hemorrhage in the Bellevue Hospital and he asked to go home.

Mr. Hagen: That is purely hearsay.

Mr. Jayne: The only reason I think it is admissible is if this man is alive, the question is whether she was the wife of

Sims. I have taken her word for it that Neal was dead, without any word about it, if you are raising that question we will have to try to go into it. 6577

A. He is not living.

Mr. Hagen: But I think that is hearsay.

Mr. Jayne: I am bringing it out as to what is in her mind. There is a case in this State where a woman thought her husband was dead because she hadn't seen or heard from him and the Court did hold that the second marriage was a common-law marriage. I am not going on that, I am presuming he actually is dead. 6578

The Commissioner: You are offering it as bearing on his death?

Mr. Jayne: On her mental attitude whether there was a common-law marriage. I also wish to establish that the first husband is dead. It never occurred to me as to the question because I was assured by her he was dead.

The Commissioner: I will allow the evidence and give you an exception Mr. Hagen, you can make a motion to strike it out if I find it isn't offered in the spirit Mr. Jayne claims it is, as bearing on the mental attitude of the woman with respect to the death. 6579

By Mr. Jayne:

Q. You were told he had a hemorrhage in Bellevue Hospital? A. Yes.

6580 Q. Do you know what he was suffering from? A. Consumption.

Mr. Hagen: I desire to enter the same objection to that.

Mr. Jayne: I will concede it is not probative on the issue of his death.

Q. How do you know that? A. That's what his uncle told me.

Q. Did you ever observe anything yourself when you saw the man that made you think he had consumption, did he have a bad cough or was 6581 he ill when you last saw him? A. He was thin but he was always thin since I knew him.

Q. He never had any cough or anything like that? A. Not that I could say.

Q. How did you know he was in Bellevue Hospital, did you get any letters from there? A. Yes, there was a little church or something there, that he was asked to join and he got them to write me a letter.

Q. A church wrote you a letter? A. It was a church or something like that.

Q. What did the letter ask? A. The letter 6582 asked to tell me he was sick, he wanted me to know he was sick in Bellevue Hospital.

Q. What did you next learn about him? A. The next I learned about him, I heard he was dead.

Q. Who told you that? A. His uncle.

Q. What was his uncle's name? A. William Neal.

Q. How did you hear from the uncle? A. He came here.

Q. Where? A. To Philadelphia.

Q. From where? A. From Richmond. 6583

Q. Is that where he lived? A. Yes.

Q. What did he tell you? A. He told me that my husband was dead and he had a nervous spell of the head so that he wouldn't give him no understanding.

Q. What do you mean by that? A. I mean to say, he didn't know, he would speak of the children, but didn't give him no understanding about me, he was delirious or something.

Q. He spoke of his children in Philadelphia? A. Yes.

Q. What did the uncle come to Philadelphia for, did he tell you? A. No, he came there, came by the house and was speaking to me and to mother concerning the children. 6584

Q. Did he bring you anything from your husband? A. No.

Q. The only way you knew he came from your husband was because he said so? A. Yes.

Q. Had you ever seen him before? A. Yes.

Q. You knew he was your husband's what, uncle? A. Yes.

Q. Did he tell you where your husband died? A. Yes.

Q. Where? A. Richmond. 6585

Mr. Hagen: Has it been proven he was dead?

A. I said he was dead, he told me he died in Richmond. He had a hemorrhage in New York and he asked to take a chance to go home, he got home and died in Richmond.

By Mr. Jayne:

Q. Have you any way of fixing the date when your husband was in the Bellevue Hospital, do

6586 you know what year it was, how old you were or any of your children, when he was in Bellevue Hospital, do you know anything about any date, as to his being there? A. I would be afraid to say.

Q. You were married to him at 17, how old were you, do you know, when you heard he was in Bellevue Hospital? A. I was about twenty, I am not sure, really I am not. I want to tell the truth that's why I wouldn't say I am sure. You can find out I am telling the truth, it must be there.

6587 Q. Were your children still little babies at that time? A. Yes they were young.

Q. When that uncle came there and told you your husband had died, or whether he did die, I don't know, we still have to find that out, where were you living then, home with your mother when the uncle came there, where were you living, where did he come to? A. He came to mother's.

Q. Were you there? A. No, I was living at 1633 North Alder.

Q. At the time he came and said your husband was dead? A. Yes.

6588 Q. Where is that, how far from where your mother is? A. About two blocks.

Q. Is that your mother's home? A. Yes, both of the houses were mother's homes.

Q. He came to the restaurant? A. Yes, 1222 West Oxford and 1633 is her house too.

Q. That's where she lives? A. Yes.

Q. You didn't see him then? A. Yes, I worked at mother's.

Q. At the restaurant? A. Yes.

Q. He came to the restaurant? A. Yes.

Q. At that time you were living in your mother's home? A. Yes. 6589

Q. Was George living with you? A. Yes.

Q. When you heard that this man you had been married to was dead, did anything occur then between you and George in the way you lived or anything? A. Yes, when I heard my husband was dead, we got married.

Q. What do you mean you got married? A. We got married amongst ourselves and God.

Q. How long had George been living with you then? A. I think about a year and a half.

Q. When you say you got married amongst yourselves and God, what do you mean, was anything said between you? A. Yes, he said, "You are my wife from now on." 6590

Q. He knew all the time he had been there about this Algie Neal, that you were married to him? A. Yes.

Q. He saw the children and knew all about it? A. Yes.

Q. Did you make any change at that time in your mode of living? A. We certainly did. Mother had the house at 1633 Alder and she had the house at 1222 West Oxford. She gave up the house at 1633 because the responsibility of both was too much for her. We took the house at 1633, we took possession. 6591

Q. Before that you lived there and your mother was there? A. Yes.

Q. What name did you go by? A. Sims.

Q. Did you go by that name before you heard your husband was dead also? A. Yes.

Q. You took George's name before you heard this about your husband? A. Yes.

Q. You were still Mrs. Sims? A. Yes.

6592 Q. Did you live anywhere else in Philadelphia after that, you speak of living together and having the house, did you live alone in the house? A. Yes.

Q. You paid the rent? A. Yes.

Q. Who did you rent it from? A. A lady had the house, a white lady, she was the owner, her name was Neal.

Q. The same name as your husband's? A. Yes, she was a white lady, a widow her name was Neal.

Q. Did you live in any other house after that?

6593 A. Yes, 1539 North 11th.

Q. Did you and George rent that house? A. Yes.

Q. Who did that belong to? A. That was in real estate's hands.

Q. How long did George and you live together there in Philadelphia, to the best of your judgment? A. A little over four years, going on five years.

Q. Are you sure about that or is that your best judgment? A. I cannot say the exact time.

Q. That's what you think it was? A. Yes.

Q. Where did he work during that time, you

6594 mentioned he worked on the railroad, what did he get on the railroad? A. He was a laborer, he got four dollars a day.

Q. Where else did he work? A. At Port Richmond.

Q. Where is that near Philadelphia? A. Yes, a place near the dock where they work on boats.

Q. Do you know what he made there? A. Five twenty a day.

Q. What did he do with his money? A. He gave it to me for the house expenses and the home.

Q. Did you work? A. I worked at mother's at 6595
the restaurant.

Q. Where else did you work? A. I worked with her all the time because she is weak.

Q. Did you ever work in a department store? A. Yes at Rhineheimer's.

Q. While you were living with George? A. Yes.

Q. What name did you work by? A. Sims.

Q. That's the name you were known by at the department store? A. Yes.

Q. How steady a man was George, how often did he get drunk? A. He would get drunk about 6596
once a month, I must tell the truth, he wasn't unruly or anything like that, but he would drink as much as once a month.

Q. He would go on a "spree"? A. Yes, about once a month.

Q. Was he good to you, did he ever beat you? A. No I never experienced that from him.

Q. How was his health? A. His health was very good as far as I know.

Q. If you were in Philadelphia, I understand he was on the boat here in New York, you were living together in Philadelphia, how did you get in New York? A. We were living together in 6597
Philadelphia, work was very scarce. I used to help mother, the little bit I was getting there didn't mean enough to carry my home expenses. He came to New York to work, I went to Atlantic City to help my cousin, she was sick with a cancer.

Q. How long were you in Atlantic City? A. Two months.

Q. Where did you leave the children? A. I had them there.

6598 Q. Where? A. Atlantic City.

Q. With you? A. Yes.

Q. Where was George during that time? A. He was working here sending me money.

Q. Have you any of the letters? A. No I hadn't thought of saving them I never thought of this happening so sudden.

Q. Did he send you money? A. Yes, he did.

Q. Do you know how much he sent or anything he said in the letters? A. He asked how I was getting along, he had a regular place he thought to work and for me to come over. After I got
6599 straightened out and all, he got to work to send me money, I got a few things I needed for myself and I went over.

Q. You mean you came to New York? A. Yes.

Q. When did you come to New York? A. In October.

Q. Where did you live in New York? A. 127 West 127th Street.

Q. Who did you live with? A. Mrs. Hector.

Q. Was that his mother? A. No.

Q. I thought you lived the same place as his mother did? A. I did, his mother moved there later, she moved with us later.

6600 Q. At the time the accident happened in December, who was living with you then? A. His mother.

Q. Do you know what jobs he had while here in New York? A. He was working in the subway, on an air drill.

Q. Do you know what he earned at that? A. Eight dollars a day.

Q. The best money he ever earned? A. Yes it was.

Q. How long did he work there, do you know?

A. I don't. He was working there all the time we were here from October until Thursday he was laid off. He said they couldn't run an air drill, it was too cold. 6601

Q. When he was laid off on Thursday what did he do about getting another job? A. That Saturday he seen an ad in the paper from the Spencer Kellogg Company.

Q. Were you with him when he saw that? A. He was at home, yes.

Q. You were at home? A. Yes.

Q. You knew he went there? A. Yes, he told me he was going there.

Q. Did he go on Saturday morning? A. Yes he went there Saturday morning. 6602

Q. Did he work there Saturday? A. No.

Q. Did he go back? A. Yes.

Q. When did he go back? A. Sunday morning, intention to work.

Q. Did he work that day? A. No he didn't. He came back Sunday because the boat didn't get in, he told me.

Q. Did he go back again? A. He went back Monday morning.

Q. How do you know he went back Monday? A. He told me he was going there Monday morning. 6603

Q. Did he get up and go early? A. Yes he got up.

Q. With his working clothes? A. Yes, when he didn't come back that night I thought he could have been making two shifts. When he didn't come back in the morning I call the company up to find out had he worked or was he still working. They told me about the men getting drowned. They asked me what time he left, I told them,

6604 then they told me the men got drowned. I asked what morgue they were at, they told me and asked me what he had on. I told them, then she said there was a man there had that on but he was an Indian. I told her I would go and see because the water could have turned him red. I went there and identified him, it was him.

AMY SIMS, a witness on behalf of Geneva Sims, being duly sworn, testified as follows:

6605 Direct examination by Mr. Jayne:

Q. Where do you live? A. 109 West 130th Street, New York City.

Q. How old are you? A. About forty-nine now, as near as I can give it.

Q. Is your husband living? A. No, dead.

Q. How many children did you have? A. Four.

Q. Are they all living? A. No, one is dead.

Q. George is dead? A. Yes.

Q. Are the others living? A. Yes.

Q. Boys or girls? A. Two boys and one girl.

6606 Q. Are they all grown? A. Yes.

Q. How many are married? A. None but the one girl.

Q. How old was your son George at the time of his death? A. Twenty-seven years old as near as I can give it.

Q. Do you know Geneva Sims? A. Yes.

Q. Where did you first meet her? A. In Philadelphia, 1635 North Alder Street, she lived next door to me.

Q. Her mother lived next door to you too? A. Yes, she was living there at the time.

Q. Did Geneva have any children there? A. Yes, she had one little boy as far as I can recall. 6607

Q. Did you see any other children? A. Yes, a little girl after.

Q. You saw her before the little girl was born? A. I saw the little girl after I was there, I only saw the little boy, the little girl was too young I suppose.

Q. Who was living there with you? A. With me?

Q. Yes? A. I was living there with my children.

Q. Where did you come from to live there? A. Where did I move from? I moved from a street they call Turner Street. 6608

Q. From another place in Philadelphia? A. Yes.

Q. How long had you been living in Philadelphia, a good many years? A. Yes.

Q. What took place between your boy George and Geneva, did they get acquainted, tell us what went on as time went on? A. They got acquainted with each other sitting on the steps and they started going together.

Q. How long was it after you were living there would you say? How long would you say you were there before your son George went to live with Geneva? A. I cannot say, I cannot remember. 6609

Q. Your best impression, if you have any? A. I don't know.

Q. Did he go and live with her? A. Yes.

Q. Where were they living then, who else was living in the same house they were living in? A. Her mother.

Q. Where was that house from the house you

6610 were living in? A. The next door from the house I was living in.

Q. Did you know Geneva had another husband at that time? A. I did not.

Q. You saw the two children there? A. They were strangers to me, I didn't inquire.

Q. Your son went to live with this woman, did you know they were Geneva's children? A. Yes.

Q. You knew that she must have had some other man? A. I never seen him, I didn't know.

Q. She wasn't going by the name Geneva Sims before you went there? A. No.

6611 Q. What name did she go by? A. Geneva Neal.

Q. Did you ever see Neal? A. No, I never did.

Q. How long after your son was living with her did she go by his name, if ever? Did she ever? A. Yes.

Q. How long after they lived together did you hear her called Mrs. Sims? A. As far as I know she was called Mrs. Sims when he first went there I suppose, I don't know.

Q. Was she called Mrs. Sims? A. Yes, sure.

Q. Did you hear her called that? A. Yes.

Q. Did you hear her called that when your

6612 son was around? A. Yes.

Q. What did your son call her? A. Geneva Sims.

Q. What did your other children call her? A. Geneva Sims.

Q. Did you hear about it when Neal died? A. I didn't. I didn't know nothing about that at all. They never told me about his dying or nothing about it, I might have heard he was dead, I didn't pay any attention to it, I don't know nothing about him.

Q. When did you come to New York? A. I came to New York in—I can't remember the date or the year, I have been here going on four years, about five years. 6613

Q. Did you come to New York before George's death? A. I did.

Q. Did you know when George came to New York? A. I did.

Q. When was it he came to New York? A. After I was here, about three years he came here.

Q. After he came to New York did you ever know of his ever writing to Geneva or sending her anything? A. Yes. 6614

Q. Where did he write to or what did he send? A. He wrote to Philadelphia.

Q. What did he send her? A. Money, every pay day.

Q. Do you know that of your own knowledge? A. Yes.

Q. How do you know that? A. He would tell me he was going out to send her money.

Mr. Hagen: I think that is purely hearsay. I object to it and move to strike it out.

6615

The Commissioner: It really is hearsay, I think it should go out.

By Mr. Jayne:

Q. Did Geneva come on to New York? A. Yes.

Q. How long before George's death? A. She came to New York in October I think it was, as near as I can comment, it wasn't very long.

Q. Did you ever know your son George to have

6616 any other woman since he first started to live with Geneva? A. No I didn't.

Q. Did he take up with any other woman? A. No.

Q. What about her, do you know about her? A. No.

Q. Do you know of them having any squabbles between the two? A. No.

Q. How did your boy work, off and on? A. He worked regular so long as he was well as I seen him. He gave me money while he was here in New York.

6617 Q. How much did he give you? A. About five dollars. He had to have some for himself. I never took much.

Q. What else did he call Geneva, except as his wife, did you ever hear him call her Mrs. Neal? A. No I didn't.

Q. Did she tell everybody she was his wife? A. He said she was his wife, when he introduced her he said Geneva Sims.

Q. You are his mother? A. I am his mother.

Q. Do you understand that according to law that either one of you two can recover from his death, that you both can't recover? A. Yes.

6618 Q. If she isn't his wife that you can recover, I told you that? A. Yes.

Q. Have you told us exactly what the thing was, exactly as you know? A. Yes I told you exactly as it was.

Cross examination by Mr. Hagen:

Q. How long was George out of work before he applied at Spencer Kellogg? A. Not very long, only a couple of days.

Q. I have here what purports to be an interview with you taken from the Daily News, that quoted you as saying, "George never would have taken that job—— 6619

Mr. Jayne: I object unless you state the name of the person she made the statement to.

Mr. Hagen: In an interview by Lloyd Acuff.

Mr. Jayne: That's the name of the person who wrote the story.

By Mr. Hagen: 6620

Q. I will ask you if you ever made this statement: "It was just before the holidays, he had been out of work three weeks." Is it your recollection that he was out of work three weeks? A. He wasn't out of work that long, only a few days.

Q. With whom had he been working? A. For the subway at 8th Avenue.

Q. Near what street? A. Between 18th Street and 23rd Street.

Q. On the new subway? A. Yes.

Q. Do you know what kind of work he was doing there? A. On a drill, I don't know what kind. 6621

Q. Did you ever make the statement that George always divided his pay between you and Geneva? A. When he was where I was and I was doing for him, he would pay me for what I was doing for him.

Q. And did you say his wife wasn't used to much? A. No.

Q. You deny you said that? A. I do.

6622 Q. When you were living together here in New York, you, George and Geneva, what arrangement did you have as to housekeeping, how did you run the house? A. We had two rooms, they had a room and I had a room. We were living in the same rooming house.

Q. Did you cook your own meals? A. Sometimes I would, when I was working she would prepare it if I asked her to.

Q. The three of you ate together? A. Yes.

Q. Who paid for the food? A. Whenever he would buy the food I would eat with them, sometimes I would buy some myself.

6623 Q. I understood from the previous witness that he gave all his money to Geneva? A. He did I suppose as long as he was with Geneva. The time I am speaking of he was with me, when Geneva was in Atlantic City and I was cooking for him.

Q. Geneva was working in Atlantic City? A. She wasn't working.

Q. I am speaking of Atlantic City, is that the time Geneva was in Atlantic City? A. She was in New York.

Q. What arrangements did you have during
6624 those three months as to the meals? A. I wasn't home all the time, I was working out.

Q. What did you make at that time? A. I made around thirteen dollars a week.

Q. Were you making that at the time George died? A. Yes.

Q. Then you weren't home for your meals at all? A. Only night times.

Q. How much did George give you during that period? A. He didn't give me anything, just unless I asked for money, I was working, I didn't need anything.

Q. He didn't regularly give you anything at 6625
that time? A. He didn't.

Q. Was it you that identified the body? A. No.

Q. Do you know the amount of the funeral bill? A. As far as I can get at it, about $195.00.

Q. Who paid it? A. I did.

Q. You paid that out of insurance he carried? A. I did.

Re-direct examination by Mr. Jayne:

Q. Have you the bill? A. I think I have.

Q. Will you mail it to me? A. I don't know 6626
whether I have it or not, my daughter may have it in the South.

By the Commissioner:

Q. Who was the undertaker? A. I got his name and everything on the bill.

Q. You don't remember it yourself? A. No I don't. Mr. O'Brien was the undertaker.

By Mr. Hagen:

Q. Where was his undertaking establishment? 6627
A. I think somewhere on 5th Avenue, near what street I can't say.

Q. I have here a statement which purports to be signed by you in which you say that Geneva's right name was Geneva Neal, what did you mean by that?

Mr. Jayne: I object to that on the ground it is presuming she signed such

6628 a statement, I ask that you show her the statement.

The Commissioner: Objection sustained.

By Mr. Hagen:

Q. I show you a statement and ask you if this is your signature? A. Yes.

Q. I show you all the pages, those are all your signatures? A. Yes.

Q. In that statement you say "Geneva Sims' right name was Geneva Neal"? A. I didn't know her husband's name.

6629 Q. Did you make that statement? A. Yes, you see there was a man there, I didn't say all these things but he said I say it.

Q. Is that true? A. Yes, very true.

Q. I will read from this statement and ask you if you recall saying it, you were speaking of your son, you say:

> "He told me that in answer to the advertisement, he went over on Saturday, December 18, 1926 and said he was hired and that he should come back Monday, December 20th, 1926."

6630

Do you recall that? A. He said to me that he went over to see about a job, he was supposed to go back on Sunday. He went back Sunday but didn't work either day.

Q. Did he tell you he had been hired? A. No, he said he was going about a job, he saw the ad and was going to see about the job.

Q. You say this statement is incorrect in that respect? A. Yes.

AARON COOPER, claimant, being duly sworn, testified as follows: 6631

Direct examination by Miss Robinson:

Q. Where do you live? A. 8 West 118th Street, New York City.

Q. Are you married or single? A. Married.

Q. How many children have you? A. Four.

Q. Are you living with your wife? A. No.

Q. Who is taking care of your wife and children? A. When I work I help a little, I am not doing much.

Q. Who are your wife and children living with? A. With her mother. 6632

Q. How old is the eldest child? A. Nine years next month.

Q. How old is the youngest? A. Seven years on the third of November.

Q. How old were you on the date of the accident? A. I was thirty years going on thirty-one.

Q. When is your birthday? A. February 8th, 1896.

Q. On December 20th, what were you doing on the "Linseed King"? A. I was going over to apply for a job. 6633

Q. Had you been on the boat before? A. I was on before.

Q. What day? A. I was there on the 18th of December.

Q. On Saturday? A. Yes.

Q. Before Saturday do I understand, I think you testified at the hearing, do I understand you worked for Spencer Kellogg before December. A. Around June I think.

Q. 1926? A. Yes.

6634 Q. How long did you work for them? A. One night and a half.

Q. On December 18th, 1926, Saturday, you went over on the boat, who did you see when you got there? A. I see Mr. Nelson the time-keeper.

Q. Did you start to work on that day? A. No, he didn't hire us, just took our name and address and tell us to come back tomorrow and if the boat is in we get the first chance.

Q. Did you go back on Sunday? A. Yes.

Q. Did you get hired on Sunday? A. No because the boat didn't come in.

6635 Mr. Hagen: I object to the conclusion.

Miss Robinson: Alright.

Q. Did you go to work on Saturday? A. No.

Q. On Sunday? A. No.

Q. Did you get paid for it? A. No.

Q. What did they tell you? A. To wait for the boat to come in, if the boat get in, he give us a job.

Q. How long were you there? A. At seven o'clock.

Q. Did you get paid for the half a day? A.

6636 No we weren't on the pay-roll.

Q. The next day you went over was Monday? A. Yes.

Q. When the accident happened? A. Yes.

JOHN JOSEPH SULLIVAN, claimant, being duly sworn, testified as follows:

Direct examination by Miss Robinson:

Q. Where do you live? A. 236 Bragaw Place, Long Island City.

Q. Are you married or single? A. Single. 6637

Q. How old are you? A. Twenty-six.

Q. At the time of the accident, how old were you? A. Twenty-five.

Q. You were on the Linseed King on December 20th, 1926? A. Yes ma'am.

Q. Will you tell us what happened in your own way, after the boat submerged or struck ice, what happened to you? A. Just when the boat was sinking you mean?

Q. Yes, how you got out and so forth? A. I was standing on the after-port stern, on the outside, against the railing, facing forward. As the boat hit about midstream, it gave list to the starboard side. 6638 It came to an even keel, struck and then sank or submerged.

Q. What did you do? A. As I seen the boat was going to sink I jumped over the starboard rail, swam to the first piece of ice that I could see, that piece of ice sank. Then I swam to a second piece of ice which also sank. The third piece of ice was quite large and I got up on this piece of ice——

Q. How long did you remain in the water? A. I remained in the water about an hour.

Q. Who picked you up? A. There was a Swedish tanker I believe, they sent the whale-boat to 6639 the piece of ice I was on.

Q. Where did they take you? A. I was taken into the whale-boat and then aboard the tug boat. I don't remember the name of the tug boat.

Q. Where did they take you? A. To 125th Street.

Q. What hospital did you go to? A. To Knickerbocker Hospital.

Q. How long did you remain in Knickerbocker Hospital? A. I guess about a week.

6640 Q. I asked you to get a certificate, have you gotten it? A. No, I haven't had time.

Q. Will you tell us what you experienced, whether you had any pain while in the water? A. I experienced a great shock by coming in contact with cold water, pains all through my back and chest and my hands were numb.

Q. Did you have any pain after you got out of the water? A. Yes, I did.

Q. Describe what pain you had, where it was and for how long a time you had it? A. Do you want me to describe the condition I was in while on the ice?

6641 Q. No, in the hospital, for how long a period after that? A. While I was in the hospital, after I got out of the hospital, for the full length of time, I guess about two months.

Q. Describe it? A. My hands were numb, finger tips I couldn't use as there was no feeling at all there.

Q. How long were you unable to use them? A. I was unable to use them for about—I guess three months at least.

Q. After you got out of the hospital did you receive any medical treatment after that? A. No,

6642 not after I got out of the hospital.

Q. When did you first start to go to work after the accident? A. I first started to go to work the last part of February after the accident.

Q. Where did you go to work? A. I went to the B. & O. Railroad, Pier 22, North River.

Q. How long had you been working there? A. I guess about two months.

Q. What were you earning there? A. I was earning there at that time twenty-four dollars a week.

Q. Where did you go to from there? A. I had to quit there on account of the condition of my health. 6643

By Mr. Hagen: I object to that, it isn't responsive.

The Commissioner: Well of course, the condition of his health——

(To the witness:)

Q. What was the trouble? A. The work I was working at at that time on the pier was too hard for the condition I was in. 6644

Q. You are not talking about Spencer, Kellogg's? A. No, the B. & O. Railroad.

Q. You didn't think you were able to do the work at that time? A. Yes, sir.

Q. You say on account of the condition of your health, what were you suffering from? A. From my hands and from nervousness, I couldn't sleep at night.

Q. Was that the result of the accident? A. I never suffered that way before the accident.

Q. You had a doctor? A. Yes. 6645

The Commissioner: The doctor can describe the symptons.

By Miss Robinson:

Q. Where did you go to after the B. & O.? A. I went to work at the Eastern Steamship Co. about the middle of April.

Q. 1927? A. Yes.

6646 Q. That was how long after you left the B. & O.? A. I guess about three or four weeks.

Q. Are you still with the Eastern Steamship Co.? A. Yes ma'am.

Q. You have been with them since April, 1927? A. Yes.

Q. What were you getting when starting to work for the Eastern Steamship Co.? A. I was earning about eighteen dollars a week.

Q. Was it piece work, was it so much per hour? A. Yes.

Q. What was the rate of wages per hour? A.
6647 Eighty cents.

Q. For how long had you been earning eighteen dollars a week or eighty cents an hour? A. From the time I started there until I guess the last part of July.

Q. Of this year or 1927? A. 1927.

Q. Have you obtained an increase since that time? A. The way they work that is, every man is hired and gets the same rate of wages but every man hired does not get the hours that a man does who works there a long time. I get the same rate of wages at the present time but I get in more hours than I did before.

6648 Q. Do you feel better now than you did when you first started to work? A. I feel better now but I have a tendency that I cannot sleep over six hours.

Q. Did you complain of that or did you have that same trouble before December 20th, 1926? A. No I did not.

Q. Have you ever been in any accident since December 20th, 1926? A. None at all.

Q. Were you in any prior to December 20th, 1926? A. No.

The Commissioner: Of course this is all being taken with the idea that these things he claims he suffered are the result of the accident. 6649

Miss Robinson: We will show that from medical testimony. There must be something for the doctor to base his opinion on, we will have the doctor here.

Q. Did you ever work for Spencer Kellogg before? A. Never did.

Q. Did you ever get any money from them? A. Not a cent.

Q. What were you doing on December 20th, 1926 on the launch? A. I was told to come over to help unload a seed boat that was coming in. 6650

Q. When did they tell you that? A. They told me that the Sunday morning we were there.

Q. When did you first go to Spencer Kellogg? A. I went over on the 18th.

Q. Saturday? A. That was Saturday.

Q. Before the accident? A. Yes.

Q. You started to work then? A. No.

Q. What did they tell you to do? A. They gave me a ticket to "come back tomorrow morning, the ship isn't in today." 6651

Q. Did you come back the following day? A. Yes, I came back Sunday the following day.

Q. Did you go to work on Sunday? A. I did not.

Q. What did they tell you? A. To catch the 6:30 boat on Monday morning.

Q. You got no pay for Saturday or Sunday? A. No.

Q. Do I understand you got no money at all? A. No.

6652 By the Commissioner:

Q. Where were you employed before you went to Spencer Kellogg? A. The last place before that, I was at the United States Shipping Board.

Q. How much did you make there? A. Sixty dollars per month, room and board.

Q. How long had you been with them? A. I had been with the United States Shipping Board for about two or three months.

Q. Where were you employed before that? A. Before that I was looking for employment.

6653 Q. Can you state the last place you were employed before that?

By Miss Robinson:

Q. Were you ever in the Navy? A. Yes, but I wouldn't care to bring that in, I wouldn't be able to produce a discharge for certain reasons. I was in the Navy and discharged in September.

Q. What year? A. 1925.

Q. What were you getting at the time you were discharged? A. Ninety-eight sixty per month.

6654 Q. With food? A. Yes, board.

Q. Were you on shore or at sea? A. I was at sea.

Q. How long in all were you in the Navy? A. Eight years.

The Commissioner: I am interrogating the witness because the all-important thing is as to the question of damages, it is of very serious import to me, I want to get all the information I can.

Cross examination by Mr. Hagen: 6655

Q. You said you were in no other accident before December 20th, 1926 and none after December 20th, 1926, were you in any other accident on December 20th, 1926? A. Just what do you mean?

Q. Were you in another accident on December 20th, 1926? A. Not beside the "Linseed King."

Q. Isn't it a fact that the ambulance you were in was struck? A. No it wasn't.

Q. What happened? A. It skidded around a corner, that's all. It wasn't struck by another automobile, it just skidded around the corner. I 6656
don't know what the name of the street is. There was no damage done to either machine, we proceeded to the hospital, no one was injured or hurt.

Q. You say "no damage was done to either machine," what do you mean by "either machine." A. Not that I could see. We skidded around the corner, two machines came together, one machine was parked at the curb and the ambulance shot around the corner, snow was on the ground and the ambulance skidded on the street.

Q. It did collide with another machine? A. 6657
Yes it did.

Q. Who were you living with on December 20th, 1926? A. I was rooming with a man by the name of William Ice.

Q. He was on the boat too? A. Yes.

Q. Did you ever know a fellow named William Winters? A. No; I didn't meet him, I might know him by sight but not know his name.

Q. Wasn't William Winters the man from whom you rented your room? A. No.

6658 Q. Who was the party from whom you rented your room? A. Deshonts was the name of the fellow we rented the room from, I don't know, Winters might have owned the house, I don't know.

Q. You say you were standing outside on the boat at the time of the accident? A. Yes on the outside of the boat.

Q. On the stern? A. Yes.

Q. Who else was standing there with you? A. I don't know the names of anybody else.

Q. Was anybody else there? A. Yes a couple
6659 of men.

Q. Didn't you testify you were standing out there alone, at the trial? A. I don't recall.

Miss Robinson: No, he didn't. I looked at the testimony today.

The Commissioner: Of course Mr. Hagen is within his rights to examine the witness. The question is alright.

Miss Robinson: I objected on the ground that he assumed he did say so.

The Commissioner: Objection overruled.

6660

By Mr. Hagen:

Q. What did you say on the trial, do you recall, as to who was on the rear of the boat? A. At the trial?

Q. Yes, before Judge Hazel? A. There were four men on the boat, I recall.

Q. Who were they? A. I cannot tell you the names, I don't know anyone on the boat only Iee and myself.

Q. Were the men colored or white men? A. Colored men. 6661

Q. Would you recall any names if I mentioned them? A. I wouldn't know them, I didn't know anyone on the boat only William Ice and myself, that's the only two.

Q. Where did you work before Spencer Kellogg on December 20th, 1926? A. The last place I worked was at the United States Shipping Board.

Q. What were you doing there? A. Practically everything aboard ship, painting, carpentry——

Q. At what place were you working? A. Fleet two. 6662

Q. A laid-up fleet? A. Yes, at Linoleumville, Staten Island it was at that time.

Q. Under whom did you work? A. Captain Walton, he was captain on the "Cohasset."

Q. Were you ever an electrician? A. Yes I was at one time.

Q. Where were you ever an electrician? A. Never East, I had not been working as an electrician since I have been up-East here.

Q. How long have you been up-East here? A. I have been East here I guess about eight years, maybe longer than that. 6663

Q. Do you remember a man named Clark interviewing you several days after you came out of the hospital and you stated to him that you had been an electrician for the past two years, do you recall that? A. Not that I recall.

Q. Do you remember Mr. Clark interviewing you? A. I don't know what his name was, he was a man from Spencer Kellogg that interviewed me.

Q. Do you remember what number time-card

6664 you got from Spencer Kellogg, have you still got it? A. Yes—3157 (looking at the card).

Q. Is this the time-card you got from Spencer Kellogg? A. That's the time card I got from Spencer Kellogg.

Mr. Hagen: I offer the time-card in evidence.

(Marked Petitioner's Exhibit A—Sullivan case.)

6665 The Witness: Spencer Kellogg's name is on the back.

By Miss Robinson:

Q. Your name isn't on it? A. No but the name would be on the other part of the card that they tore off.

By Mr. Hagen:

Q. You remember the gentleman who came to see you, to whom I refer as Mr. Clark, offering to get you a position at the United Dressed Beef
6666 Company? A. No, no gentleman ever offered me a position at the United Dressed Beef Company or whatever company you are talking about.

Q. Did you receive anything from the Charity Organization Society? A. Yes I did.

Q. You received twenty dollars? A. I did.

Q. Did you receive any further help from them? A. No.

Q. As a matter of fact you reported to them that you had obtained a job? A. That I had obtained a job?

Q. Yes? A. I wouldn't say yes or no, I 6667
couldn't recall, I'd have to look up my records.

Q. Do you keep records too? A. Certainly I do.

Q. Have you them with you? A. No I haven't. If I knew you would bring up these questions I would have brought my records.

The Commissioner: You will have an opportunity to bring them here, that's alright.

By Mr. Hagen:

6668

Q. How long did you work for the B. & O.? A. I can't just tell you here.

Q. Roughly, one week? A. More than one week.

Q. How many weeks, eight weeks? A. I will say four weeks.

Q. Who were you working for there? A. Do you mean the foreman?

Q. Yes? A. The foreman over me was the General Foreman—Tom Lenihan.

Q. Why did you leave there? A. Because I couldn't stand the work.

6669

Q. What work did you do for the Eastern Steamship Company when you first started? A. I pulled a truck the same as the next man.

Q. The same as for the B. & O.? A. No, different work.

Q. What did you do for the B. & O.? A. I worked for the B. & O. tiering freight and cars.

Q. What department were you working in for the B. & O.? A. That would be the Freight department.

6670 Q. Do they have East and West bound? A. Yes, that would be the East-bound Freight department.

Q. With the Eastern Steamship Company, what department did you work in there? A. That's the Southern division of the Eastern Steamship Company and we receive ships from Norfolk, Va.

Q. Is that the Old Dominion Line? A. Yes, the Eastern has control of it at the present time.

Q. That's who you are working for? A. Yes.

Q. When did you quit the U. S. Shipping
6671 Board? A. I cannot give you the exact date now.

Q. Give me about the time? A. I guess about six weeks before December 20th, I imagine.

Q. The Shipping Board job was the first you had after you left the Navy? A. Yes.

Q. How did you come to leave the Navy? A. I was discharged.

Q. Honorably? A. I wouldn't answer that.

Q. Your record would show wouldn't it? A. In a way it would, yes.

Q. Were you in the Navy under the name of John Joseph Sullivan? A. I refuse to answer
6672 that.

Mr. Hagen: I insist upon that.

The Commissioner: You will have to answer that.

The Witness: That doesn't pertain to the accident.

The Commissioner: You will have to answer that question, you are under cross examination, you cannot refuse to answer, your counsel will protect you, it is perfectly proper.

A. No. — 6673

By Mr. Hagen:

Q. Under what name were you in the Navy? A. I would like to ask a question—what is the idea of these questions pertaining to the Navy?

(The witness addressed his question to the Commissioner.)

The Commissioner: You see they have the right to cross examine you in reference to the claim you are making against the Company. In making the investigation 6674
you must expect that they will ask you all sorts of questions that bear upon different things connected with your life.

The Witness: I understand that but does the Navy pertain to this?

The Commissioner: It would but I don't want to discuss that with you. The question is a perfectly proper one, they could find out anyway.

The Witness: I understand that.

Miss Robinson: You will have to answer that the best way you can.

The Commissioner: The witness should 6675
answer the question, it is a perfectly proper question.

The Witness: John Edward Fitzpatrick.

Q. Was that your Baptismal name? A. It is.

Q. Then Sullivan is not your correct name? A. No it isn't.

Q. Where were you born? A. St. Louis, Mo.

Q. When were you born there, what year, do you recall? A. 1902.

6676 Q. What day of the year were you born? A. February 21st.

Q. 1902? A. Yes.

Q. Did you ever have a General Court-martial, in the Navy? A. Yes.

Q. Where did that take place, on ship? A. Yes on ship.

Q. What vessel were you connected with in those days, can you give us the name of the vessel? A. The "Fanning".

Q. Were you convicted of the Court-martial? A. Yes.

6677 Q. What was the nature of the offense of which you were convicted? A. Extension of liberty.

Q. That is the charge, what was the specification? A. Desertion would specify that.

JOHN KAKOS, claimant, being duly sworn, testified as follows, by Max Beran, an interpreter from the Lawyers Translation Bureau, who was also duly sworn as an interpreter:

By Mr. Hagen (to Mr. Beran):

6678 Q. You are not related to this man? A. I am not.

Q. You have never seen him before? A. This is the first time.

Direct examination by Miss Robinson:

Q. What is your full name? A. John Kakos.

Q. Where do you live? A. Carbon County, Lansford, Pennsylvania.

Q. What relation are you to John W. Kakos? 6679
A. I am his father.

Q. How old was your son John on December 20th, 1926? A. Twenty-eight.

Q. When did you last see your son John? A. Last September, 1926.

Q. When did you last hear from your son? A. I heard the last time from him in 1926 maybe a day or two before the ship went down.

Q. Do you know where your son had been working? A. Yes.

Q. Where was he working, what was the name of the company? A. Kellogg Company.

Q. What if anything did your son John say 6680
to you in his letter that you received a day or two before the accident?

Mr. Hagen: I have no knowledge of any letter, I object to that.

The Commissioner: The letter would be the best evidence.

By Miss Robinson:

Q. How did you hear from your son, by letter, or did you talk to him? A. He sent me a letter 6681
before that ship got drowned, he said, "I come home but I just get work here, maybe I not going to come home in the Christmas time," that's the last letter I got.

Q. Where is that letter? A. We was read it and after we throw it away.

Q. What did your son write you in the letter? A. He says to me, "I be come home on Christmas but I not going to come home because I get work where I must go on a ship across the water to

6682 my work. That costs me lots of money, that I don't want to make expense and I don't come home at Christmas time."

Q. Did he say the name of the ship? A. Yes.

Q. What did he say? A. Some kind of Kings.

Q. Did you see him at Christmas time? A. No I don't see him.

Q. Have you ever seen him since you received that letter in December? A. I received a letter, I don't see my son no more.

Q. Did you hear from him any more? A. No, only the letter and another boy sent me a letter,

6683 he try and find out he got drowned, that boy sent me a letter.

Q. Did you ever see the body of your son? A. Sure I am see it, I put him in the ground, I pay the funeral for him.

Q. Did you bury him? A. Yes.

Q. How much did you pay for the burial of your son? A. It cost me altogether I guess—I have no receipt with me—about $500.00.

Mr. Hagen: I object to that, as to the cost of the funeral expenses.

The Commissioner: I think you ought

6684 to produce a bill as you have in the other cases.

Miss Robinson: We will, I will get the name of the undertaker.

Q. What was the name of the undertaker who buried him? A. I cannot keep everything in my head—Mr. Sharpe.

Q. In your City? A. Yes.

Q. Will you send us the bill? A. Yes.

Q. Did your son ever give you any money while he was alive?

Mr. Hagen: I object to that, it is immaterial whether he gave him any money or not. 6685

Miss Robinson: Why is it?

The Commissioner: That question is not in good form.

By Miss Robinson:

Q. Did your son ever contribute to your support? A. Sure, he support me on what he got, I was able to work, he support me.

By the Commissioner: 6686

Q. Did you mean you were not able to work? A. Yes.

By Miss Robinson:

Q. Why weren't you able to work? A. I was hurt in the other company by dynamite.

Q. Where were you hurt by this dynamite? A. In the Lehigh Coal and Navigation Company, in the mines.

Q. Do you know the names of some of the employers of your son before December 20th, 1926? 6687
A. No I don't know the names of any.

Q. Did your son use any other name beside John Kakos? A. Yes, William Kenny.

Q. Did you ever receive any letters from him signed "William Kenny"? A. Yes, John William Kenny.

Mr. Hagen: I object to that as there is no letter, that would be the best proof.

6688 By Miss Robinson:

Q. Have you any letter that your son sent you signed "John William Kenny"? A. I have not, I throw away, I was read it and throw it away.

Q. How were those letters signed? A. John William Kenny.

Q. Where was your son's residence? A. Carbon County, Lansford, Pennsylvania.

Miss. Robinson: I wish to offer the Letters of Administration issued to John W. Kakos, Carbon County, Pennsylvania.

6689 Mr. Hagen: I object to them.

The Commissioner: It would seem as a fundamental principal that the letters should be applied for where the person resided.

Mr. Hagen: I think you should get ancillary letters.

The Commissioner: I think that's so.

Miss Robinson: The ancillary letters may be necessary but these are also important.

The Commissioner: Why can't we for
6690 the present withdraw the introduction of the letters and Miss Robinson won't be prejudiced in any way and she can get ancillary letters.

Mr. Hagen: Miss Robinson, do you want to stand on these?

Miss Robinson: Yes.

Mr. Hagen: Alright, put them in.

(Letters of Administration marked Claimant's Exhibit 1 –Kakos case, 11/9/28.)

Miss Robinson: I offer the death cer- 6691
tificate of John Kakos.

Mr. Hagen: I object to that, he was found in April and the cause of death is given as "drowning on the 'Linseed King'". Also it is not the best evidence as to the identification of the man.

Miss Robinson: I offer a copy of the records of the Medical Examiner as bearing on the death of John W. Kakos, with the seal of the Clerk. I will get the original record if you want.

Mr. Hagen: It is just as objectionable, 6692
for the reasons stated.

The Commissioner: Of course the question of identification is very important. (Reading from the record:) "Body picked up in North River; name of deceased: unknown man; subject: report of unknown white man drowned. James J. Moyihan, March 31st, 1927."

Miss Robinson: If they want the man to testify here, I will have him, this is the first time Mr. Hagen objected, he accepted it in the Ramsland case.

Mr. Hagen: I will enter an objection in 6693
the Ramsland case now.

Miss Robinson: You will not, it is too late, the record speaks for itself.

The Commissioner (referring to the record): I don't see that this is complete.

Miss Robinson: If they want the original I will get it.

Mr. Hagen: I want the person who made the identification.

6694 Miss Robinson: Alright we will have him.

Mr. Hagen: If I allowed the Ramsland record to go in, I want to object to it now.

Miss Robinson: I want to object to that, after twelve hearings.

The Commissioner: I want you both to develop your cases in the way you see fit. I don't want to stand on technicalities, I want the cases fully developed.

6695 Cross examination by Mr. Hagen:

Q. Mr. Kakos, how long before the boat sank did you receive that letter from your son which said he was working for Spencer Kellogg? Was it the same day or the day before? A. I don't remember.

Q. The day before was Sunday, did you get it on Sunday? A. On Saturday I received the letter.

Q. Did he tell you what kind of work he had? A. He told me because he had secured work he couldn't come home for Christmas.

Q. Did he tell you in that letter you received
6696 on Saturday that he had secured work? A. Yes, in that letter he told me he secured work.

Q. Do you know what day that letter was written? A. I don't remember.

Q. Do you know how long it takes for a letter to get from New York to where you live? A. I don't know exactly, it can be a day, I don't know.

Q: You received that letter from your son on the Saturday before the accident, is that right? A. That was the day I received the letter, since, I didn't have any notice from him.

Q. Do you know what day of the month the accident took place? A. I don't remember the date. 6697

Q. How many weeks before Christmas did the accident happen? A. Some days only, a few days.

Q. How did you find out what day the accident happened? A. A friend of my son who worked with him together told me that the boat sank where my son used to go to work.

Q. What is the name of that friend? A. I only know Jim, he was a German, he came with him from Pennsylvania, I don't know any other name. 6698

Q. How did you find out your son was working for Spencer Kellogg? A. By that letter.

Mr. Hagen: I move to strike out all the testimony as being hearsay testimony, with reference to his working for Spencer Kellogg.

Miss Robinson: I object on the ground that the Commissioner has already ruled on communications had between the deceased and the Administrator of the Estate are admissible. It will all be linked up with how he met his death. 6699

Mr. Hagen: This is not a transaction had with the deceased.

Miss Robinson: It is a communication, the statute says, "Communications and transactions." I cannot see why a letter is any different than a conversation.

The Commissioner: It is a communication.

Miss Robinson: Certainly.

The Commissioner: Mr. Hagen I will

6700 deny your motion, with the right to renew it.

Mr. Hagen: Alright, we intend to hold that open until the end.

Q. Just what did he write in that letter, about his work and where he was going to work? A. He said, the only thing he write, he wanted to come home for Christmas but because he secured the work he would not come, it was too much expense.

Q. Did I understand you to say on direct, that it cost him a lot of money to travel on the
6701 ship, on the boat?

The Commissioner: Of course Mr. Hagen, he said that in connection with a lot of other things.

Mr. Hagen: I would like to get the record clear.

A. He said he was going on the boat to go to work. It would cost too much money to go home.

Q. When was it you saw the body of your son? A. April, 1927.

6702 Q. You say you have been injured while working for the Lehigh Coal and Navigation Company? A. Yes.

The Commissioner: Do I understand that this body was not recovered until April, 1927?

Miss Robinson: Yes, it was found floating in the river.

The Commissioner: Ask him to tell what state it was in when it was found.

Miss Robinson: We will produce the undertaker. 6703

By the Commissioner:

Q. What state was the body in when it was found? A. He must have fell on a stone, his forehead was split when he was a small boy he had an accident where he had his head split, the head was full of water on account of it.

Q. What I want to know particularly is this, whether the body could be identified as the body of your son in April, 1927, when he was found? A. Yes, marks on the hands. 6704

Q. Is that all? A. Marks on the hands, marks on the forehead and head where he fell when he was a small boy.

Q. Could the face be identified, did it bear any marks at all? A. His face wasn't changed, it was only water went through the ears and through the hole in the forehead, the face I identified right away with all the marks.

By Mr. Hagen:

Q. Was there a hole in the forehead, was the skin broken through? A. The skin was separated on the forehead. 6705

By the Commissioner:

Q. In 1926 was your wife living? A. She is living still.

Q. How old was she then? A. Forty-five.

Q. How old are you? A. I was fifty-six when it happened.

Q. Did you own any property in 1926? A. I

6706 had some small property but I had a mortgage on it after I had the accident I had to sell it.

Q. Did you have any money in the bank on December 20th? A. No.

Q. Did you have any other sons living at that time? A. Yes I had another son who is married.

Q. Was he married at that time? A. Sure, he was married then.

Q. Was he living with you? A. No.

Q. How long had he been married before this accident? A. Two or three years.

Q. Did the other son who is married contribute
6707 anything to your support and your wife's support at that time or before that time? A. No, as long as he was single he supported me as much as he could, after he got married he didn't.

Q. How much did you realize on the property you sold and when did you sell it? A. Three years ago I sold it.

Q. How much did you get for it? A. Three thousand dollars I got for it.

By Mr. Hagen:

Q. How many children have you? A. I have
6708 six.

Q. How many boys? A. Four.

Q. Are they all alive? A. We had six boys before, two died, four live yet. At home we have one, that's how I would say it.

Q. How old is the boy at home? A. Fifteen, not sixteen years old yet, going to school.

Q. Where are the other boys? A. One is in the Lehigh Coal and Navigation Company, Lansford, one lives in Reading.

Mr. Hagen: I have been told by his

lawyer that he testified two work for the Lehigh Coal and Navigation Company and one lives in Reading. 6709

Q. How many are married? A. Two married.

Q. Was John married? A. No, Joe and Stephen married.

Q. Did John ever work for the Lehigh Coal and Navigation Company? A. Yes before he was go away of me.

Q. When did he leave your house, when did he quit the Lehigh Coal and Navigation Company? A. I guess about twenty-three years, when he left the job he after went to the Army and to Philadelphia and worked there on a boat, rivets in the shipyard. 6710

Q. What name did he work under there? A. The same like you have it now, John William Kenny and Kakos.

Q. When he wrote letters did he sign them "John"? A. No, John William.

Q. Is that all he signed on the letters? A. Yes.

Q. Is that the only way he signed? A. John William, yes, that's his second name.

Q. His name that you gave him was John William Kakos? A. Yes. 6711

Q. When he wrote you did he write in English? A. Sure.

Q. Did you ever write back to him? A. No my younger son.

Re-direct examination by Miss Robinson:

Q. Was there any mortgage on your property at the time you sold it? A. Sure.

6712 Q. How much was it? A. The debt on the house was two thousand dollars.

Q. And how much did you sell it for? A. Three thousand dollars.

Q. Did you get three thousand dollars in cash? A. Of the three thousand dollars I paid the two thousand and there remained for me about eight hundred dollars.

Miss Robinson: I want to reserve the right to call Mr. George Spielman.

The Commissioner: You have that right.

6713 Miss Robinson: If it becomes necessary, if we need ancillary letters I wish to produce them in addition to the letters already offered.

Mr. Hagen: Certainly.

The Commissioner: The only trouble with this death certificate is as to the identification of the person who was found. The issue is the question of identification.

(A number of the questions were answered directly by the witness, without the aid of the interpreter.)

6714 HILDA HICKS, Claimant, being duly sworn, testified as follows:

Direct examination by Mr. Riley:

Q. What is your address Mrs. Hicks? A. 4730 44th Street, Woodside, Long Island.

Q. Are you the widow of David Hicks, deceased? A. Yes, sir.

Q. When and where did you marry David? A. In the town of Stamford, New York.

Q. Stamford, New York? A. Stamfordville, New York. 6715

Q. When? A. The 10th day of July, 1895.

Q. Will you produce the marriage certificate please? A. Yes.

(The witness handed a certificate to Mr. Riley which was also exhibited to Mr. Hagen.)

Mr. Hagen: I am not disputing the marriage.

Mr. Riley: I respectfully refer to Exhibit TT already in evidence Mr. Commissioner being the Police Records which show 6716
that the body of David Hicks was one of those recovered in the cabin of the "Linseed King".

Q. Were you living with your husband on the date he died? A. Yes, sir.

Q. How many children of the marriage were living at that time? A. Six.

Q. How many were minors below twenty-one years of age? A. Only one.

By the Commissioner:

6717

Q. How old was she? A. She was ten.

By Mr. Riley:

Q. Is she twelve now? A. Yes.

Q. Is she living now? A. Yes.

Q. What was the age of your husband at the time he died? A. Sixty-two.

Q. And what was your age? A. I was fifty-five.

6718 Q. When your husband died? A. Yes.

Q. Just give us the names and ages of the children at that time please? A. Olga Hicks 30; Emil Hicks 28; Hilda Hicks 26; Vera Hicks 24; Nellie Hicks 21 and Joyce Hicks 10.

Q. How many of your children were living home with your husband and you at the time he died? A. Two of them.

Q. One was Joyce the youngest and which other one? A. Nellie.

Q. Did Nellie work at that time? A. Yes but she was sick at the time of the accident, she was home sick, otherwise she was working.

6719 Q. Was she working or out of a job? A. She was working but stayed out a few weeks from sickness.

Q. When did you last see your husband David Hicks alive? A. Four o'clock in the morning when he got up and got his breakfast to start for work.

Q. If the day of the accident was December 20th, 1926 you saw him at four o'clock that morning? A. Yes.

Q. What did he tell you as to where he was going? A. He told he was going to the Ferry

6720 to get the boat for the "Linseed Company".

Q. You mean Spencer Kellogg & Sons, Inc.? A. Yes.

Q. How long had he been working for that company? A. That was the first day he had been there Saturday and Sunday he went over and the boat wasn't in and they told him to come back Monday and he went back on Monday.

Q. Do you know what his wages were with Spencer Kellogg? A. I do not, I didn't ask him I think in the paper it said forty-eight cents an hour.

Q. Your husband replied in response to an ad- 6721
vertisement in the newspaper? A. Yes.

Q. Did you see him have any card or anything that showed he had accepted a position? A. I didn't but my daughter-in-law did.

Q. Did you bury your husband? A. Yes.

Q. Can you state to the Court what the amount of the funeral bill was which you paid? A. I got the bill here (looking at the bill). It was $227.20.

By Mr. Hagen:

Q. Has this bill been paid? A. Yes, with the 6722
insurance money.

Mr. Riley: I offer the bill in evidence.

(Received and marked Claimant's Exhibit 1.)

Q. At the time your husband died did he have any other means of income than what he earned each week? A. No, only what he earned.

Q. At the time he died did he have any insurance on his life? A. Yes, three hundred dollars.

Q. Do you know what company that insurance 6723
was in? A. The Prudential.

Q. What did your husband work at before he took this job? A. Digging in the subways.

Q. Would you say he was a laborer? A. Yes, day laborer.

Q. At the time your husband worked as day laborer what were his customary wages on that job? A. Sometimes he worked over, from Thirty to Thirty-five a week.

6724 Q. How much of that money did he give you? A. He gave me about all, he kept five or six dollars for lunch and carfare and like that.

Q. Do you do any work now? A. Yes I work every day, Sundays and holidays and all.

Q. How much do you make? A. I make fifty-five a month. I am chambermaid in a hotel and out of that I pay for my little girl.

Q. Did you work before your husband's death? A. Yes, I did.

Q. What did you work at then? A. The same thing I have been there four years.

6725 Q. How many years before your husband's death did you work there? A. I went out practical nursing more or less when I lived in Poughkeepsie.

Q. How much would you say you made? A. About eighteen or twenty dollars a week, different cases.

Q. At the time of your husband's death how many children were being supported by him at home? A. One, Joyce.

Cross examination by Mr. Hagen:

6726 Q. How long before December 20th, 1926 was your husband out of work? A. A few weeks.

Q. Before that time did you know what company he worked for? A. I cannot say, he was digging. I remember I went up to one place and got his pay once he was sick, that was at the City Hall, I don't know the company.

Q. Was he working for the Street Cleaning Department for the City? A. It seems to me, but I cannot say. He had a big button. I turned it in and got his wages.

Q. How long before December 20th was that? 6727
A. A few weeks.

Q. Do you know how long he had been working for that company or for the City? A. Quite a while, steady right along until he was taken sick.

Q. What was his real business? A. Farmer.

Q. Did you have a farm in Poughkeepsie? A. He worked a farm on shares for years.

Q. Did you live with him at Poughkeepsie? A. Yes.

Q. How long ago is it since you left Poughkeepsie? A. 1913.

Q. Do you mean you left Poughkeepsie in 1913 6728
or that you left the farm? A. We left the farm in 1913.

Q. When did you leave Poughkeepsie? A. About five years ago.

Q. You lived in Poughkeepsie after you left the farm? A. Yes.

Q. You left Poughkeepsie then about 1923 or 1924? A. Yes.

Q. In Poughkeepsie what sort of work did Mr. Hicks do? A. He worked in the separator until they closed up, they laid off all the older men then he worked for an Old Men's Home about a year or so. 6729

Q. That's in Poughkeepsie too? A. Yes.

Q. When you speak of the Separator you mean the Creamery? A. Delival, yes, he worked there about four or five years.

Q. The year you left Poughkeepsie did Mr. Hicks come to New York with you? A. Yes.

Q. Where did you live? A. We went right to my son's home.

Q. Your son is married? A. Yes.

Q. He runs his own home? A. Yes.

6730 Q. Is Joyce with you now? A. No, she stays on a farm in Norwalk.

Q. Norwalk, Connecticut? A. Yes.

By Mr. Riley:

Q. Is Joyce in good health now? A. Yes, as far as I know.

Mr. Riley: I should like to introduce in evidence the Limited Letters of Administration issued by the Surrogate's Court to Hilda Hicks.

6731 Mr. Hagen: I have no objection.

(Received and marked Claimant's Exhibit 2.)

By Mr. Hagen:

Q. During the four or five years prior to your husband's death, he had been living at home with you? A. Yes.

Q. You had been preparing his meals? A. Yes.

Q. You paid for his meals out of the moneys which he turned over to you? A. Sure.

6732

By Mr. Riley:

Q. Do you know if your husband ever got any pay from Spencer Kellogg? A. No, he couldn't have, he just went that morning.

Q. He never actually put in any work on the job? A. He started for the boat, he didn't get there, the boat didn't get there.

Mr. Hagen: I will read into the record

the substance of the marriage certificate 6733
marked Claimant's Exhibit 1:

Dated: July 10th, 1895, showing a marriage between
David Hicks, white
Occupation: Farmer, age 36 and
Hilda Lundquist, white, age 24
Marriage solemnized by Rev. Barnes, Clergyman at Stamfordville, Dutchess County, New York.

ELIZABETH HICKS, a witness on behalf of Hilda 6734
Hicks, Claimant, being duly sworn, testified as follows:

Direct examination by Mr. Riley:

Q. Where do you live Mrs. Hicks? A. 4730 44th Street, Woodside, Long Island.

Q. Are you the daughter-in-law of the witness who last testified, Mrs. Hilda Hicks? A. I am.

Q. And of Mr. David Hicks who died? A. Yes.

Q. Did you know Mr. David Hicks in his lifetime? A. I did.

Q. How long before the date of his death did 6735
you see him and speak with him? A. Sunday afternoon.

Q. Did he say anything to you at that time about his employment? A. Just that he had gotten the position there on Saturday.

Q. Did he show you any card at the time? A. Yes a card and sort of ticket, I believe it was sort of a badge he laid it on the table. I didn't pay much attention to it, my own mother was dying at the time.

6736 Q. Have you ever seen that card since the date of his death? A. No.

Q. Do you know if it was found on his body? A. I didn't see his body.

Q. Didn't you attend the funeral? A. No, my own mother was dying at the time, I couldn't.

Q. Do you know how long before his death he was actually employed in the City of New York, previous to the job at Spencer Kellogg? A. He had been working up until he had a bad cold, he had been working steadily until about two or three weeks before that time.

6737 Q. Do you know the name of his employer? A. No, I do not.

Q. Have you heard he worked on a subway job? A. I understand he was digging for a new subway.

Q. Did you understand at that time that he worked for the City or for some contractor? A. I believe some contractor.

Q. Are you able to tell us now who that contractor was? A. No I couldn't.

Q. What is the name of your husband? A. Emil.

Q. He is the son of the late David Hicks? A. Yes.

6738

ROBERT L. PROVEN, a Claimant, having been duly sworn, testified as follows:

Direct examination by Miss Robinson:

Q. What is your address Mr. Proven? A. 38 Day Street, Liverpool, England.

Q. How old were you on December 20th, 1926? A. Twenty-one.

Q. Are you married or single? A. Single. 6739

Q. Were you on board the "Linseed King" on December 20th, 1926? A. I was.

Q. Tell us just what happened to you when the boat sank, relate your experience in the water? A. There was a big crash, I burst a window and got through the window and went out into the water. I was there a long time, I don't know how long now, I forget. I got on a cake of ice and stayed there until I was picked up by a tug.

Q. Where were you taken? A. To the Knickerbocker Hospital.

Q. How long were you there? A. Two days. 6740

Q. Where did you go from there? A. I went back to the place I was living at the time, 23rd Street.

Q. How long did you remain home? A. A little over three weeks I guess.

Q. Did you feel any pain in the water, or were you hurt anywhere? A. I was rather cut in one or two places, in the legs and the arms from the ice. I was pretty well frozen when I was picked up.

Q. When did you go back to work? A. As I say, a little over three weeks later. 6741

Q. What had you been doing prior to December 20th, 1926? A. I was going away to sea as a steward.

Q. On what ships had you been sailing previous to the accident? A. "Baltic", "Cedric", "Manchuria".

Q. What were you getting on board those ships? A. On the English ships about four dollars less than American ships. I was getting forty-five dollars on the American ships.

6742 Q. Does that include your tips or is it exclusive of tips? A. It is exclusive of tips.

Q. What did your tips amount to? A. I really couldn't say that's so very uncertain.

Q. These boats you speak of are passenger boats? A. Yes.

Q. Approximately how much would the tips amount to? A. If I take the Panama Pacific, the "Manchuria", I reckon I could make about sixty or seventy dollars in an ordinary job for a cruise of eighteen days.

Q. That's inclusive of the forty-five dollars?
6743 A. Yes.

The Commissioner: Is this the right kind of evidence?

By Miss Robinson:

Q. What did you earn a month prior to December 20th, 1926, sailing as a steward, let us have the average amount per month? A. About a hundred dollars a month, that is besides my board and keep.

Q. You got your board and keep on those
6744 boats? A. Yes.

Q. What would you say it cost you for board and keep while in the City and while not on board ship? A. To take a rather low estimate I should say about eighteen dollars, that's a very low estimate, it is not allowing me any scope at all.

Q. You have been sailing on these ships since about three weeks after the accident? A. Yes.

Q. Continuously? A. No with short breaks to change ships.

Q. How long were these cuts you speak of visible, or were the wounds visible? A. I don't know if they were so very long, they weren't very serious. 6745

Q. How long did you suffer from the wounds? A. Maybe ten days.

Q. What were you doing on the boat on the morning of December 20th, 1926? A. I was going over as they told me to return to get work.

Q. Had you been on the boat before? A. Yes, on the morning previous to that.

Q. What did they tell you when you got over there? A. The first morning they told me to come back Sunday and gave me a slip. 6746

Q. Did you go back Sunday? A. I did.

Q. Did you work Sunday? A. No.

Q. What did they tell you? A. They told me to come back Monday.

Q. You never got any money from Spencer Kellogg? A. No.

Q. Did you ever get any money from Spencer Kellogg? A. No.

Q. Did you ever work for Spencer Kellogg? A. No.

Q. Did you know one James Heap? A. Yes.

Q. How long had you known him? A. I had know him I might say about eight months at the time of the accident. 6747

Q. Do you know where he was living at the time of the accident on December 20th, 1926? A. Yes, with me.

Q. Did you see him or was he on the boat the morning of the disaster? A. Yes.

Q. Was he there with you? A. Yes.

Q. Have you seen him since December 20th, 1926? A. No.

6748 Q. Did you see him go down in the boat? A. I saw him go down in the water.

Q. You never saw him again? A. No.

Q. Do you know what kind of work Heap was doing prior to December 20th, 1926? A. The same as myself.

Q. Do you know what ships he was sailing on? A. On the "Manchuria", the "Cedric", the "Pittsburgh".

Q. Do you know how old a fellow he was? A. I believe he was about twenty or twenty-one at the time of the accident.

6749 Q. About your age? A. Yes.

Q. Do you know as steward if he made the same wages as you made? A. Exactly.

Cross examination by Mr. Hagen:

Q. You are a British subject? A. Yes.

Q. And so was Heap? A. Yes.

Q. How did you happen to go over to Spencer Kellogg, were you out of work? A. I didn't have a ship at the time I just left the "Manchuria". I was in need of work, I saw it advertised and I went over.

6750 Q. That was the same situation with Heap? A. Yes.

Q. Did you tell us how long you had been out of work before you went to Spencer Kellogg? A. I could have looked up my discharges.

Q. Was it a week or two weeks or a month? A. It was about two or three weeks I am not sure which.

Q. Was that the same situation with Mr. Heap? A. Yes.

Q. Had you arrangements for taking another vessel? A. Yes I was going back on the "Manchuria", and I did so afterwards when she returned. 6751

Q. Do you remember when she returned? A. Yes she returned as I say a little over three weeks after the accident.

Q. The employment at Spencer Kellogg was a temporary arrangement? A. Yes just a stand-by.

Q. Will you tell us just what happened the first day you went to Spencer Kellogg, what occurred there at the employment office? A. He just opened the door and invited us all in. There was a great bunch of us, he gave us all a slip, asked our age, what kind of work we had done. They gave us a slip with a number on. 6752

Q. A cardboard slip? A. Yes.

Q. It had a number on? A. Yes.

Q. What did they tell you that first day? A. That the ship did not come in, to return on the following day on Sunday.

Q. When you came back Sunday what did they tell you on Sunday? A. They told us to return again Monday.

Q. They told you the ship didn't come in Sunday? A. They didn't say that, they said come back again tomorrow. 6753

Q. The understanding was that you were to begin actual work when the ship came in? A. As far as I could understand, yes.

Q. That was the same thing told the other men that were with you? A. As far as I know, yes.

Q. Did you go out on the "Manchuria" when she came back three weeks after December 20th, 1926? A. Yes.

6754 Q. You speak of your board and keep while you were here in New York, how much did you say that was? A. I should say about eighteen dollars. I never went into a house and received my board and keep and paid for it. I usually get my lodgings and keep myself.

Q. You consider that low for a man in your station of life? A. I may say it was low when you take into consideration on having nothing out of that, a man even in my station in life must have a little recreation. Eighteen dollars would I think provide me with cigarettes, laun-

6755 dry and such things.

Q. Would you consider that a fair average for a man of your standing? A. I think so, it always cost me that and more when I had it.

Q. Did you go over to Spencer Kellogg in response to the advertisement that asked for laborers? A. Yes, it appeared in the World.

Q. You were to take ordinary laboring work during this period? A. As far as I knew, yes.

Q. Did you have any doctors bills? A. No.

Q. Did you have any treatment by any doctor other than the hospital doctor? A. No.

Q. You were discharged by the hospital doctor?

6756 A. Yes.

By the Commissioner:

Q. What position did you apply for at the "Linseed King"? A. The advertisement called for men to work on the ship. I just went over in answer to that advertisement.

Q. Are your parents living? A. Yes.

Q. Where? A. 33 Day Street, Liverpool.

Q. Have you any brothers and sisters? A. Yes, 6757
one brother and a sister.

Q. How old are your parents, about? A. I think my father is about—pretty near sixty.

Q. And your mother? A. She must be about fifty-six maybe.

Q. What is your father's business? A. He is a decorator.

Q. Do you know about how much he makes a week? A. He works for himself, I don't know.

Q. Do you know about how much he receives a week? A. I have no idea.

Q. Do you go to Liverpool when you go back 6758
with the ships? A. Yes for five days.

Q. Your father wasn't dependent upon you for any portion of your wages? A. Just at that particular time, it was previous to that he was out of work. He was working for a corporation at the time. It was after the accident he broke out in his own.

Q. Did you render him any aid at that time? A. I was yes, I was sending him money at various intervals.

Q. You say at various intervals, covering how much of a period, during what period of time did 6759
you contribute to the support of your father if that is the case? A. I always do even when we are home or if they are in need or not.

Q. How much did you contribute to them, of your wages? A. I sent twenty dollars a month, I used to average that I think.

Q. How did you send it? A. Sometimes in an ordinary letter and sometimes——

Q. Cash? A. Yes in bills and sometimes through the post office money order.

Q. The only time you were obliged to pay your

6760 board was during the time you were not engaged in making a trip over and back, is that right? A. That's correct but you must consider at that time I was not employed on the western ocean boat, I was employed on an American ship.

Q. I would like to know what period of time you paid your board and what period of time you did not? A. When I was on the "Manchuria" I was six weeks or forty-two days away and eight or nine days on shore, it depended on when we got in.

Q. If I understand you correctly your father
6761 was a decorator for himself? A. Not at the time he wasn't.

Q. He was working for someone else? A. Yes only just at Christmas he got fired, just after the accident.

Q. Did you tell me for what period of time, how long you did really send money to your parents? A. I cannot say I did it regularly but when I could, it was during the course of about two years.

Q. How is your father's condition today? A. You mean his financial condition?

Q. Yes? A. I wouldn't say it is too good but
6762 he is getting along.

Re-direct examination by Miss Robinson:

Q. When you were there on Saturday did they tell you what they wanted you for? A. They didn't tell us.

Q. On Sunday what did they tell you? A. They didn't tell us anything except come back Monday.

Q. They didn't tell you what kind of work you were supposed to do? A. No.

H. J. Aldrich—for Petitioner—Direct.

By Mr. Hagen: 6763

Q. Did Mr. Heap also get one of those cards? A. He did.

Q. The reason I ask is because you gave us the number of his card, 3149? A. Yes.

(At this point an adjournment was taken to Thursday, April 11th, 1929, at 10:30 A. M.)

H. J. ALDRICH, a witness called on behalf of the petitioner, being duly sworn, testified as follows: 6764

Direct examination by Mr. Hagen:

Q. What is your address Mr. Aldrich? A. 98 Delaware Avenue, Buffalo, N. Y.

Mr. Hagen: I wish to refer to the testimony of Mr. Aldrich taken in the limitation proceedings and which appears at page 1696 thereof and page 2100.

Miss Robinson: I understand the whole limitation proceedings are part of the record. 6765

Mr. Hagen: I understood we would refer specifically to any part we wished to use in this proceeding. I think we ought to be limited, there is so much testimony.

Miss Robinson: We said the entire limitation proceedings would be part of the record except as to exhibits and we would offer them specifically.

Mr. Hagen: I am going to refer specifically to the testimony taken and make it

6766 a part hereof. Page 1696 is where Mr. Aldrich was called by Mr. Axtell; at page 2100 he was called as a witness for the petitioner. I also refer to the testimony of Stover at 2107; McCahill at page 1905 and subsequent pages.

Q. You are an officer of Spencer Kellogg & Sons, Inc.? A. Yes.

Q. What officer are you? A. Secretary.

Q. What duties have you in connection with the company, what are your duties?" A. The
6767 duties of official secretary. I have charge of the stock records.

Q. Have you anything to do with the employment? A. Everything to do with the personnel.

Q. I have here some records entitled "New York Payrolls" and would like to have you explain to us how these records are kept, how do you keep them as to the specific men in your employ? A. You mean how they are made up?

Q. Yes, please? A. From week to week they are made up each day from the time card and the work card. The time card or the clock card, the man's time is recorded on that by punching
6768 the clock morning and evening. The work card during the day's job upon which he may work, is listed on that card and the time he puts on each job. At the close of the day the time on the clock card and work card must agree. From those cards the original payroll record is made up.

Q. And the original payroll record shows the hours each man works per day? A. Yes.

Q. Does that apply to certain employees whose names ordinarily appear on the first page of the payroll? A. No.

Q. Why not? A. They are on a weekly basis. 6769

Q. Not on time cards? A. That's the idea.

Q. When that payroll is made out where do they pay the men? A. In New Jersey.

Q. At the plant? A. Yes, Edgewater.

Q. The amounts paid to the men, does that appear on the payroll? A. Yes.

Q. After you have paid the men off what becomes of that payroll? A. It is sent to the Accounting Department in Buffalo.

Mr. Hagen: If anybody wants this payroll record in evidence I will be glad to put it in but I have prepared an abstract or Mr. Aldrich has, it is an abstract of these payrolls, being much shorter and simpler than the original payroll records. 6770

By Mr. Jayne:

Q. Is it a transcript? A. Not but a total of the earnings of these men for the entire period they worked for Spencer Kellogg.

Mr. Jayne (to Mr. Hagen): Does it show every item of fact on the original record? 6771

Mr. Hagen: No.

Mr. Jayne: Does it show every day?

Mr. Hagen: No, the total of each week.

Mr. Jayne: You offer the transcript and we can make a comparison with the original record.

Mr. Hagen: Let's offer the whole thing in evidence with the stipulation that in the event either side should want to take

6772 an appeal they may not be printed as part of the record.

Miss Robinson: You offer that transcript and we won't object subject to correction, if we want to verify and correct it we can.

Mr. Hagen: I offer in evidence the payroll record for the year 1926 complete, with the exception of the payroll record of December 18th which was offered at the trial and which I shall refer to.

The Commissioner: Of course some of
6773 the attorneys who are not here today might want to object but being they are not here, they cannot, but I wouldn't want to shut them out.

Mr. Hagen: These original payroll records will be back in my office in my safe and can be seen at any time.

Q. Mr. Aldrich I have here other records for 1927 and ask you if they are carbon copies of the original payrolls, as to clock number and name and hours, it shows the hours each man worked? A. Yes, each week.

6774 Q. Is that carried out in full as the payroll? A. No, it is not.

Q. What is the object of that record? A. For personnel purposes.

Q. That covers the year 1927? A. Yes.

Q. Is that the record which you use in preparing the record of the men who were survivors and returned to work after the accident, or not? A. I don't get the question.

Q. Is that the record you prepared for me in preparing these lists? A. Yes.

Q. It is the same thing as these payroll records 6775
without the amounts carried out, just the hours?
A. The Accounting Department gets the original payroll with the amount and name, I get a card with just the hours for personnel purposes. The money is not carried out, it shows the rate per hour and the number of hours worked per week.

By the Commissioner:

Q. Mr. Aldrich what part do you play in getting up this record, that isn't your work? A. No, the same clerk got that up who got up the original payroll. 6776

(The witness referred to the abstract.)

By Mr. Hagen:

Q. These are the original records of the company? (Referring to the payrolls.) A. Yes, these are gotten up by the same clerk, at the plant.

Q. Some months ago Mr. Aldrich, did I submit to you a list of the claims filed in the limitation proceedings? A. You did.

Q. Did you at my request prepare an abstract 6777
of these payrolls? A. I did.

Q. I show you a sheaf of papers which appears to be a list of names of individuals who are alleged to have lost their lives in the "Linseed King" accident, please explain how you made up these records. I notice there is one before me—"J. Alexander", there appears on the top "Clock 595" in typewriting and "5355" in pen, what is meant by "Clock Number"? A. The number of

6778 his time card, the number he works under in the plant.

Q. Do you happen to know why there are two numbers? A. He worked under two different numbers during the period of his employment, as appears on this sheet.

Q. Did you personally prepare these records? A. I did.

Q. Did you check them against the original payroll? A. I did.

Q. On the upper right hand column appears "Date of employment, Tuesday June 1, 1926", what does that mean? A. That is the date he
6779 began work or services with our company.

Q. Then you have in the left hand column, "Week ending, 1926", the first entry is "6/5", what does that mean? A. That means the Saturday of that particular week, the end of that week.

Q. That would be the week that began six or seven days previous to that Saturday? A. Yes.

Q. You have "hours worked....40"? A. Yes, the total number of hours worked that week.

Q. And "Rate 70"? A. Yes, seventy cents an hour.

6780 Q. Were they employed by the day, week, or hour? A. By the hour.

Q. You have in the last column "amount"? A. That's the total earnings for that week.

Q. You have listed the various weeks, and under a heading "Total earnings $552.79"? A. That is the total amount he earned from the time he was employed or began to work down to the close of the week of December 18th in this particular case.

Q. Another record might show the total earn-

ings to the week ending November 6th, that would 6781
mean the total that he earned up to the time of the last date on the sheet? A. Yes, that's right.

Q. And the last entry you have there is "Average weekly earnings", tell us how you arrived at that figure? A. By dividing the total earnings by the number of weeks during the period of employment.

Mr. Hagen: I will offer in evidence the abstracts prepared by Mr. Aldrich.

Miss Robinson: I object on the ground that it is not the best evidence, the best evidence is the original pay roll records. 6782

Mr. Marsh: I object also.

Mr. Hagen: It is offered as a computation gotten up by this witness, we have a right to put them in evidence, it is prepared by this witness.

Mr. Kennedy: May we look at what you are offering?

Mr. Hagen: Certainly. (Handing the abstracts referred to, to Mr. Kennedy.)

Mr. Jayne: Some weeks he may have stopped working and then went back three weeks later, are you including that in the average? 6783

Mr. Hagen: It all appears on the record and this abstract was made for the convenience of the Court. Where a man has been away for two or three weeks, that appears in the average, if for two or three days, that also is taken into the average.

Mr. Jayne: I object to it on the ground it doesn't reflect his true earnings. The issue is what the dependent's lost by reason of his death.

6784 Mr. Hagen: That is a matter of argument.

Mr. Jayne: No, he may have worked somewhere else and gone back and you are including that in reduction of his total earnings, it makes his earnings a conclusion.

By Miss Robinson:

Q. Did you typewrite this abstract, Mr. Aldrich? A. No.

6785 Miss Robinson: I object, it wasn't prepared by him.

The Witness: They were checked over personally after they were typewritten.

The Commissioner: If these matters were gotten up under his subordination, of course he cannot do this work himself.

Miss Robinson: I object to it on the grounds set forth in Mr. Jayne's objection.

Mr. Hagen: That's why I have put both payrolls and computation in so they can be checked, the computation has been prepared for the convenience of the Court.

6786 The Commissioner: Mr. Jayne's objection is very pertinent, we want to consider and arrive at the right basis for a computation as to what a man or his survivors are entitled to. There is no objection to this, it is the foundation of the whole thing, it has been prepared simply as a matter of convenience to assist you.

Miss Robinson: Let it be marked for identification.

The Commissioner: How else are you going to get this information out. 6787

Mr. Jayne: From the payrolls.

By Mr. Hagen:

Q. How long did it take to prepare that abstract, Mr. Aldrich? A. I worked two or three weeks on it, checking it, that had nothing to do with the typewriting.

Mr. Jayne: If your Honor will please bear in mind that the figures are apt to be erroneous, they may include a week that he didn't work for this company but he may have worked somewhere else. What do you do with that. 6788

The Commisisoner: Isn't it up to you to show what he did during the time he didn't work for Spencer Kellogg, there's no use lumbering up the record. I think it is up to you to supply that proof.

Mr. Jayne: That would be impossible to supply in the average case as to where he was on a certain day two or three years before he died. They take into their computation of his average weekly earnings, the weeks even though he may not have been working only one or two days. They could give the wages earned while he worked and give a computation as to how many days of absence there was. 6789

Mr. Hagen: It gives the total hours worked each week.

Mr. Hendler: May I ask that the claimants to which that refers be read off, it doesn't apply to all.

6790 Mr. Hagen: I will cover that.

Mr. Jayne: Objection withdrawn.

Miss Robinson: My objection will stand, it isn't the best evidence.

The Commissioner: How else will we get at it?

Miss Robinson: The payroll record is the best evidence.

The Commissioner: This is supplemental to the payroll, it doesn't effect it, the payroll is in evidence and is the fundamental of the whole thing. This is a matter of convenience and I think it helps us all.

6791

Miss Robinson: There are many things convenient but they may be erroneous. I am not going to stand on any computation that the petitioner worked out.

The Commissioner: How will you arrive at the measure of damages?

Miss Robinson: By what they earned each week.

The Commissioner: That abstract tells it.

Miss Robinson: The payroll tells it, I will not take his transcript and be bound by it, the best evidence is already in.

6792

Mr. Hagen: You won't have to be bound by anything.

Mr. Hendler: It tallies with the payroll.

The Commissioner: This was prepared under the supervision of this witness, you can ask him whether the work in his opinion was prepared properly and skilfully. My idea is that while the payroll is already in evidence, this is supplementary and an

aid. It simplifies matters and relieves us of the necessity of poring over the payroll records. 6793

Miss Robinson: I don't want to be bound by this, I want an opportunity to check it.

Mr. Jayne: I move that we have a ruling.

The Commissioner: As I said before we have the foundation of the fundamental evidence in regard to arriving at the wages that these people earned, what they were entitled to, this is supplemental to the payroll. You can accept this, receive it in evidence subject to any corrections that may be made by an examination of the original payrolls. 6794

Miss Robinson: I except to your ruling, permitting it in evidence.

The Commissioner: I wish to make the following statement on the record: Inasmuch as there is no objection to the payroll records going in evidence and which have been received in evidence and inasmuch as Mr. Aldrich, Secretary of the company has compiled from said records statements as to the wages earned by each claimant whether continuously employed or otherwise, the Commissioner will receive such supplement or supplementary statement as an aid to the claimant's in arriving at the damages to which they may be entitled. This supplemental statement is received subject to such corrections as may be made, if upon examination it is found 6795

6796 that such statement in any way conflicts with the fundamental payroll.

Miss Robinson: I make the same exception.

Mr. Kennedy: The objection of one is the objection of all, is that right?

The Commissioner: Yes.

Mr. Jayne: The weekly computation is apt to be erroneous.

The Commissioner: You can make an examination yourself.

Mr. Jayne: The hourly rate for which
6797 each man worked is there, that is correct, the only thing we quarrel about is as to the rate given for his average weekly earnings.

The Commissioner: I will allow every claimant to cross examine Mr. Aldrich and find out if any mistake or error has been made and if his method is wrong.

(The supplement or abstract referred to was marked Petitioner's Exhibit 2, pages 1 to 45, March 19th, 1929.)

6798 By Mr. Hagen:

Q. Mr. Aldrich did you also prepare a similar record in reference to the men who claimed to be survivors of this disaster? A. Yes.

Q. In connection with these men you also prepared a record as to earnings after the accident? A. Yes.

Q. In preparing that record after the accident you have pursued the same method? A. Yes.

Mr. Hagen: I offer in evidence the records as to the men who it is claimed are

survivors, showing their earnings before and after the accident. 6799

Miss Robinson: I offer the same objection, it isn't the best evidence.

Mr. Kennedy: I object, it is incompetent.

(Records referred to marked Petitioner's Exhibit 3, pages 6 to 22, March 19th, 1929.)

By the Commissioner:

Q. We find "D. Barker", date of employment "November 9, 1926", clock 3168, what was the method employed by you in making this computation? A. Simply a matter of copying from the original payroll. 6800

(The witness exhibited to the Commissioner the manner in which the several items in the columns were arrived at.)

The Commissioner: I will reserve my ruling for the present. My notions are we need some help in these matters. If Miss Robinson will point out what else we can get that will be more satisfactory, I am willing that she do so. 6801

Miss Robinson: The payrolls.

The Commissioner: You have that, it is here. If these records in any way conflict with the original payrolls, we will strike them out.

Miss Robinson: I cannot be expected to determine in advance whether I will be bound by them.

6802 The Commissioner: I will receive them subject to Miss Robinson's objection.

(All attorneys present, with the exception of Mr. Jayne, joined in Miss Robinson's objection.)

Mr. Hagen: From the sheets prepared by Mr. Aldrich I will remove the following, for the reason that there has been no proof in any of these cases. I will withhold these and mark them for identification so they can be offered in on a following date.

6803

Louis Vega	Clock 3111
Robert Proven	Clock 3149
John Castro	Clock 596
Thomas Jones	Clock 3112

(The remaining sheets were marked for identification.)

By Mr. Hagen:

Q. Did you find any names on the list of claims filed in this proceeding as to which you had no record at your plant? A. I did.

6804 Q. Did you personally examine the payroll record and records of the company from the list of claims furnished to you by me? A. Yes.

Q. Did you find names as to which you found no payroll records or record of employment?

Mr. Marsh: I object to that as being irrelevant, incompetent and immaterial.

Mr. Kennedy: I object on the same ground.

Mr. Hendler: I offer the same objection.

Mr. Hagen: I want to bring out all the facts in connection with this matter. The claimants' attorneys can question Mr. Aldrich after he has testified. 6805

Mr. Marsh: I don't think there is any evidence that the names not appearing were not actually employed.

Mr. Hagen: I want to explain why the list is not complete.

The Commissioner: I am inclined to sustain the objection.

Mr. Hagen: I am willing to put in everything, if they don't want it, alright. 6806

By Mr. Hagen:

Q. Mr. Aldrich, do these lists which have been marked in evidence, I refer to Petitioner's Exhibit 2, I find on some of them an entry as follows: "Reported for work December 18, 1926, ship not arrived", and following it is the same statement referring to the date "December 19", will you explain to us the meaning of those sentences?

Miss Robinson: I object to the question, it doesn't appear to need any explanation, the records speak for themselves. 6807

The Commissioner: I don't think it is necessary, the document speaks for itself.

By Mr. Hagen:

Q. Mr. Aldrich, tell us what your method is or was on December 17th, as to men who applied at your plant in answer to the advertisement which appeared in several New York papers?

6808 Miss Robinson: I object, it is immaterial, incompetent and irrelevant. The accident happened on December 20th, 1926.

Mr. Hagen: It refers to certain men who applied on December 17th.

Miss Robinson: That isn't in the record yet.

Mr. Hagen: I want to bring out all the details relating to these men that I think should be brought before the Commissioner. We have some men who testified that when they came on December 17th,

6809 they were hired, others said they weren't. I want to bring out all of the facts relating to these men who came on December 17th and 18th.

Miss Robinson: It hasn't been shown anybody came on December 17th.

Mr. Jayne: You want to show what happened to these men that came on December 17th, Mr. Aldrich was in Buffalo then, bring the man who saw them on December 17th, Mr. Stover and McCahill.

Mr. Hendler: These men are dead, how

6810 can you bring out any of the conversations?

The Commissioner: Objection sustained.

Mr. Hagen: I want to refer specifically to Exhibit QQQ to be considered in connection with the testimony of Mr. Aldrich when called by Mr. Axtell, I believe it was offered by Mr. Axtell. However, I call attention to the fact that that exhibit has been in Mr. Axtell's possession since October 28th.

Miss Robinson: I beg your pardon, I

went to the Clerk's Office, the records there show when they were taken. 6811

Mr. Hagen: I also wish to call attention to the fact that inasmuch as it has been in the possession of Mr. Axtell for some considerable time I wish an opportunity to check up on it to see if any changes have been made.

By Mr. Hagen:

Q. Mr. Aldrich I understand you testified you were in charge of the personnel or employment of the men, is that right? A. Yes. 6812

Q. Did you at any time give notice to any of your employees that you would not be bound by the provisions of the New Jersey Workmen's Compensation Act?

Miss Robinson: I object to that question, it was asked at the limitation proceedings and the objection was sustained.

Mr. Marsh: I join in that objection.

Miss Robinson: I object on the same ground and the same objections made there.

6813

Mr. Hagen: I want the specific objection.

Miss Robinson (Reading from the testimony of the limitation proceedings)—"Page 2107:

"By Mr. Englar:

"Q. Mr. Stover did you at any time give notice to any of your employees that you would

6814 not be bound by the New Jersey Workmen's Compensation Law? A. No, sir.

"Q. Did anyone ever give you any such notice? A. No.

"Miss Robinson: I object on the ground that it is incompetent, etc."

Mr. Jayne: Mr. Hagen, I think that is a matter for us to raise, not for you.

Mr. Hagen: We are contending that if the Workmen's Compensation Law applies to these cases, that the proper claimants are not before the Court, that the case
6815 should take its course before the Workmen's Compensation Bureau; we must take proof at present on the question of Workmen's Compensation.

Mr. Jayne: Offer the Statute, that's all you have to do.

Miss Robinson: It is already in evidence.

Mr. Jayne: Bring a man from the plant Mr. Aldrich wasn't there.

Mr. Hagen: I asked Mr. Aldrich if he ever gave this notice, did he or not. I
6816 want to show that the man in charge of the employment didn't do it.

Mr. Jayne: It calls for a conclusion, I object.

The Commissioner: Judge Hazel ruled that the United States Court is the court where this should be tried.

Mr. Hagen: He ruled that the question should be left for a later date. We need the proof on that to go before Judge Hazel on that matter. If the Court rules

one man was an employee, Judge Hazel may rule he had no right to file a claim here but should have proceeded before the Workmen's Compensation Law in New Jersey. We must have proof as to the conditions under which these men were employed. 6817

The Commissioner. Put your question in another form, as to what arrangement if any was made when these people were employed.

Mr. Jayne: I object as to the form, it calls for a c lusion. I suggest he ask what notice or communication this witness had with any of these employees in this proceeding. 6818

Mr. Marsh: I object to any conversations or notice, written or oral given to any of the persons who were killed in this disaster.

The Commissioner: Objection sustained.

Miss Robinson: I object on the further ground that his testimony is entirely incompetent, irrelevant and immaterial.

Mr. Jayne: He had no communication written or oral with any of the men. 6819

Mr. Hagen: I want an exception to the ruling.

The Commissioner: You are taxing me in regard to many novel propositions and I went to satisfy myself as to how far you can go as to any conversations that took place or arrangements made with any man who sought employment with the defendants, what was said in regard to it. I want to be frank in saying I am not clear and

6820 want to satisfy myself, I will reserve a ruling and let you know later what I think about it.

By Mr. Hagen:

Q. Did you ever have any conversation with any of your employees as to whether or not you would be bound by the Workmen's Compensation Law?

Mr. Jayne: The same objection.

6821 By Mr. Hagen:

Q. Did any of your employees ever give you any such notice?

The Commissioner: What conversation did he have with these men?

Miss Robinson: He had none, he wasn't there, he was in Buffalo.

Mr. Jayne: This man was a safety director.

By Mr. Hagen:

6822 Q. Where were the men actually employed, on the New York side or on the New Jersey side, do you know? A. Yes.

Miss Robinson: He doesn't know, he isn't competent to testify.

By Mr. Hagen:

Q. Where? A. In New Jersey.

Mr. Marsh: I move to strike it out, 6823
it calls for a conclusion and the answer is a conclusion.

The Commissioner: Put your question in another form.

By Mr. Hagen:

Q. Where was your employment office? A. In New Jersey.

Q. When men came over for employment, how did they get over? A. By boat.

Q. What was that boat used for?

6824

Mr. Jayne: I object unless it is shown he has knowledge.

(To the witness:)

Q. You were the Safety Director of this company? A. At that time, yes, Personnel Director.

Q. You called yourself a Safety Director? A. Personnel Director.

Q. Did you ever call yourself Safety Director? A. Not officially.

Q. That was what you were, is that so? A. Personnel Director.

6825

Q. Were you in charge of the Safety Division as to the employees? A. I was.

Q. Where is your office where you actually sit and hold forth as an officer of this company? A. My office is in Buffalo.

Q. How often did you come from your office in Buffalo to the plant on the Jersey shore at Edgewater? A. About every two weeks.

Q. When was the last time you were there prior to the accident? A. About the last two days in

6826 November and the first week in December if I remember right.

Q. What was the usual and customary duration of your visit? A. About three or four days, sometimes a week.

Q. What was the name of the man who was actually in charge of hiring and firing men on this job? A. The employment man in the plant was the man that hired them as to the matter of firing them it was the foreman.

Q. How many foremen were there? A. You mean in the different departments of the plant?

6827 Q. Yes? A. Probably ten or twelve.

Q. What was the man's name that hired them? A. I think Mr. Nelson was the man in charge.

Q. How long had he been in charge? A. I cannot tell now without referring to the records.

Q. Tell us approximately? A. About six months.

Q. Prior to the accident? A. Yes.

Q. You yourself personally did not interview these men did you when they were employed? A. I did not, no, sir, except men of the higher class, but men of the ordinary laboring type, the claimants in this case I did not.

6828 Q. The interviews you had with employees would not apply to any of the men, claimants here? A. No.

Q. Everything you know as to the terms of their employment is hearsay? A. No it is not.

Q. Did you employ any of the men for whom claims are made in this proceeding? A. Directly?

Q. Yourself in person? A. No.

Q. Did you have any personal communication

with any of them at any time? A. In connection with the hiring of them? 6829

Q. Did you have any personal communication with any of them? A. Yes.

Q. What men did you have personal communications with? A. I cannot give you that off hand.

Q. Give us one instance of one man you had any personal communication with, direct from you to that man? A. There's a man, Roberts, chauffeur.

Q. What conversation did you have with Roberts? A. I cannot tell you, my contact with the personnel is generally every time I visit it. 6830

Miss Robinson: I object to all the questions asked by Mr. Jayne as to conversations had with various employees on the ground that the men being dead, it is impossible to dispute it. I am not objecting to his other questions.

The Commissioner: Objection sustained.

Mr. Jayne: I will withdraw the question as to the dead men.

(To the witness:)

6831

Q. You didn't converse with any of these men at the time of their employment? A. I did not.

Miss Robinson: I object.

The Commissioner: That might include the dead men. I won't allow the conversation but the question.

Mr. Jayne: I wasn't asking what it was I asked whether he had any conversation.

6832 Miss Robinson: I object anyway this witness is incompetent to testify as to the employment of any of these claimants. It clearly appears he wasn't there at the time, the record in the limitation proceedings clearly shows the last time he was in New York was on November 6th, 1926, over a month before the accident.

The Commissioner: The objection is perfectly proper. This is not the best evidence, this witness admits he didn't hire the men.

6833 Mr. Hagen: I asked him where the employment office was and where they came to be hired.

Re-direct examination by Mr. Hagen:

Q. Did you at any time since the "Linseed King" disaster pay any funeral bills of men who were alleged to have lost their lives? A. Yes.

Q. Have you prepared a list of those bills which you paid? A. Yes.

Q. Is this the list? A. It is.

Q. What are those checks which appear on
6834 the outside? A. The checks with which the bills were paid.

Q. I find first on the list a check to the order of Bigham, Englar and Jones in the amount of $1159.25 dated February 16th, 1927, account of burying seven unclaimed bodies, do you know the names of any of these? A. I do not.

Q. Do you happen to know the names of the undertakers who performed that service? A. I do not.

Mr. Hagen: I wish to make a statement on the record that this check of $1159.25 or the proceeds of this check went to John L. McDermott, Undertaker. 6835

Q. Next on the list is a check for $133 given to Marcus Gonzales, paid to the Charity Organization Society, did you have a bill for that funeral? A. Yes.

Q. That is in payment of the bill? A. It is.

Q. The next is one for Fernando Martin, $150, the check is made payable to the order of Bigham, Englar and Jones, that you also paid? A. Yes. 6836

Mr. Hagen: We paid these over to John L. McDermott, Undertaker.

Q. These payments, were they in full settlement of the bills presented? A. They were.

Mr. Hagen: I offer them in evidence with the checks attached.

(Received and marked Petitioner's Exhibit 4, March 19th, 1929.)

Q. Did you get any signatures on any forms of Workmen's Compensation applications or releases on any cases? A. No. 6837

Cross examination by Miss Robinson:

Q. Do you have any record of the handwriting of any of these men that came to you, do you know if they signed anything or any document? A. We have their signature on the back of cancelled checks.

6838 Q. That's the only record you have? A. Yes.

Q. This Exhibit CCC offered in evidence at the time of the limitation proceedings, do the names that appear on that, are they absolutely correct as to spelling? A. Not necessarily, they are as the men gave them to us.

Q. The name might be misspelled then? A. Possibly, yes.

Q. Do you know whether the names and addresses on this Exhibit BBB are absolutely correct, which was offered in evidence at the time of the limitation trial?

6839 Mr. Hagen: I object on the ground that it is wholly immaterial.

The Commissioner: You can ask that question so far as his knowledge extends as to whether the names were spelled properly or not.

Mr. Hagen: I object it is immaterial at this time, I have no objection to anything being brought out.

The Witness: Was this list prepared by me?

Miss Robinson: Yes, of the employees
6840 supposed to have been working at Edgewater up to December 18th, 1926, are those names spelled correctly?

The Witness: Yes as they appear on our records.

Mr. Hagen: That exhibit has also been in Miss Robinson's possession.

Miss Robinson: All the exhibits are in our possession.

Q. Do you keep a very accurate list of the information, the names and addresses of these men

you hired to unload ships? A. We take the names 6841
and addresses as given.

Q. And that is supposed to be accurate? A. We have no other means.

Q. Do you preserve those records as a part of your office files? A. We don't.

Q. You don't preserve them? A. No.

Q. How do you know they worked for you if you don't preserve them? A. The payrolls show it. They are preserved from three to six months and then destroyed, we don't lumber up our files with those records.

Q. When do you destroy them? A. From three 6842
to six months.

Q. What do you destroy from three to six months? A. These hiring slips.

Q. What does it consist of? A. Our form number 39, we have a slip, our application of hire for this class of labor, our ship labor. We don't fill it out, only take the name and address of the men, after the ship is unloaded and the men laid off we have no further use for the record.

Q. You are sure you get the right name and address? A. We take the name he gives.

Q. I want to read your testimony at the limita- 6843
tion proceedings, the questions and answers put to you and ask you if you made these answers: "Q. Was there a practice on the part of the person who engaged men to come back Monday that is if engaged Saturday, for some day anticipating the arrival of a ship, to keep a list of the men hired? A. In this way, simply as a memorandum, no list was preserved. I will say this that this memorandum, I would like to say when we came to look for it someone had pilfered it from the office. I have no means of knowing

6844 where it went." What do you mean by that memorandum? A. The same thing I referred to before, form 39 all we take is the name and address.

Q. What do you mean when you say no list is preserved? A. We keep the list from three to six months and then destroy it.

Q. What does it contain? A. A list of the men hired for that particular ship.

Q. The original record is actually destroyed? A. Yes.

6845 The Commissioner: That is after they are transcribed to some other book?

By Miss Robinson:

Q. You said the lists BBB and CCC contained the names and addresses as those men gave them to you, is that right? A. I don't know what you mean by BBB and CCC.

Q. Triple C is the payroll and BBB is a list of the men who worked at the plant, do they contain the correct names and addresses as they gave them to you? A. Yes, they contain the
6846 names and addresses as we took them from the records.

Q. You say as the men gave them to you? A. On the original payroll.

Q. Are the original records correct so far as the men gave them to you? A. Sure they are.

Q. They represent the correct names and addresses so far as the men gave them to you? A. Absolutely.

Q. I will read your testimony at the limitation proceedings, your attention was called to the

name of one Thomas Coyle, whose name is apparently not on this list you prepared and you suggested his address was not known. "I find he is on the payroll as T. Cole and we have no address for him"? A. That's right. 6847

Q. Then those records are not absolutely correct as to the spelling of names? A. I said as to the way the men gave them to us, we found afterwards that Cole and Coyle was the same person.

Q. How did you find that out? A. An investigation we made after the accident.

Q. You were also asked: "Similar mistakes might also have been made? A. Very few so far as these ship men were concerned. We were never particular as to their names and addresses." Did you make that answer? A. Yes. 6848

Q. That applies to all these men, you are not particular as to keeping their names and addresses, as to any men you hire? A. I wouldn't say that.

Q. I read further from the record, page 1700: "We are not very particular as to taking their addresses or keeping their records".

Mr. Hagen: It appears in the limitation proceedings what they were hired for. 6849

Miss Robinson: I limit my cross examination as to the ship men.

By the Commissioner:

Q. When you talk about ship men are you including these men as ship men? A. The situation is this, sometimes we would have a ship of flaxseed or raw material coming in and when it comes in we hire extra men to unload it in

6850 addition to the regular men, as soon as we get word it is near port, we immediately advertise and hire men to have them ready for when the ship comes.

By Miss Robinson:

Q. This Exhibit QQQ I presume from the testimony these were some of the ship men hired or supposed to have been hired for December 20th, 1926? A. Yes.

Q. How long do you keep your cancelled checks and records? A. Cancelled check records are
6851 kept five or six years.

Q. You would have all the cancelled checks for salaries paid to these employees in 1926, less than five years ago? A. Yes.

Q. They would show what each man got each week? A. Yes.

Q. All your employees are paid by check? A. Yes.

Q. Always? A. Yes.

Q. You have a record of all cancelled checks for 1926, for wages paid to all employees? A. Yes.

6852 Q. These time cards you have, these men punched a clock at the plant, what is the practice as to all men, do you know if they punch a clock? A. They do.

Q. Are these time cards preserved for any length of time? A. No, not for any great length of time.

Q. For how long? A. When the files get full they are taken out and destroyed.

Q. Are the 1926 time cards destroyed? A. Not since the accident but prior to the accident some

of them were destroyed I cannot tell you how many we did keep. 6853

Q. Some of them have been destroyed? A. Yes.

By the Commissioner:

Q. Did you make an exception as to the time cards of persons who were lost, were those preserved? A. All we had at that time have been preserved.

By Miss Robinson:

Q. Have you any special rule of the company that requires them to be preserved for a week, a month or a year, or is it discretionary? A. It is discretionary with the officers. 6854

Q. You have no rule on that? A. No.

Q. You destroy them whenever you feel like it? A. Yes.

Q. Do you remember testifying at the Limitation Proceedings that the "Linseed King" did not run whenever it was supposed to be bad weather or there was ice in the water?

Mr. Hagen: I object to that as being immaterial. 6855

Miss Robinson: It is a preliminary question to a number of things and it is important. I ask that it stand, subject to a motion to strike it out later on.

The Commissioner: Question allowed.

A. As to what I testified to at the trial I don't remember, that's the fact. That is the order that was issued.

Q. Do you have any record as to the number

6856 of days this boat was laid up during the year? A. Usually two or three months.

Q. If it was bad weather for the other nine or ten months the boat didn't run, trips were cancelled when conditions didn't permit? A. Yes.

Q. That would happen throughout the year? A. Yes.

Q. How did the men from New York get to Edgewater when the boat was laid up for one reason or another? A. They went up to 125th Street to the ferry.

Q. Did you pay these men their fare in addi-
6857 tion to their salary when they used the ferry? A. No.

Q. They paid that? A. Yes.

Q. You have no record of the number of times any employe used the ferry instead of the "Linseed King"? A. No.

Q. I show you Exhibit 25 offered by the Petitioner at the trial of the Limitation Proceedings, I understand it contains a list of a number of men used in unloading a ship at any given time from August to December, 1926? A. Hasn't something been torn from the top?

Q. No, I assure you it is the record in evidence.
6858 A. It doesn't tell what it is.

Q. You didn't tell us, does it say what it is? A. Wasn't there another sheet attached?

Q. No, I assure you there wasn't anything else. A. Wasn't this with something else?

Q. No. A. It is our practice to have a heading on all papers.

Q. Do you deny this is your record? A. No, you asked me to tell you something that is more than two years ago.

Q. Do you know what it is, if not say so? A. Something has been cut from the top. 6859

Q. I assure you I didn't cut it from the top? A. The ragged edge shows it has. It has the appearance of a list I prepared showing the time of the different shifts but something has been cut off.

Q. You swear that something was cut off? A. Yes.

Q. Something was cut off since the exhibit was offered in evidence? A. Yes.

Q. You will note that the "S/S Tesharo" that was the boat to be unloaded December 20th, 1926, is that right? A. I believe that is the name of the steamer, yes. 6860

Q. You will notice that on December 20th, there is a notation from 7:00 A. M. to 6:00 P. M. Were these men on this Exhibit QQQ supposed to be included in these sixty-two men to unload the ship? A. If they were working on that ship yes, my headings are cut off what I say now I will not stand by, this is a mutilated slip.

Miss Robinson: There were ink marks showing the pages at the time it was offered in evidence, at the very top. 6861

Mr. Hagen: Do you swear to that.

Miss Robinson: Yes. I saw them at the trial they were marked at the time, the page numbers were 1, 2, 3, and 4. I call the Commissioners attention to the fact that this sheet Exhibit 25 was copied from the original records which Mr. Englar offered at the time of the trial, they were green sheets. It was a loading list, in-

6862 stead of offering it all he asked us to consent to this going in.

Cross examination by Mr. Marsh:

Q. Mr. Aldrich, this Exhibit QQQ endorsed in evidence at the Limitation Proceedings January 31st, 1928 is that a list of the men who were employed to unload the boat? A. Yes.

Q. They were employed on December 19th to come and unload the boat the following day? A. Yes, they were employed to go to work that day but were actually employed two days before.

6863

Mr. Jayne: I object to the question it calls for a conclusion and the answer is a conclusion. I move to strike it out.

Miss Robinson: I join in the objection.

Mr. Jayne: The employment was not consummated until he punched the clock.

Mr. Hagen: I wish the question and answer to stand.

Mr. Marsh: I wish to withdraw it.

Q. This paper, Petitioner's Exhibit 4 of today

6864 shows on the extreme right hand column the names of the persons who were drowned in this disaster and whose funeral expenses the attached checks cover? A. Yes, except the first for seven unclaimed bodies.

Redirect by Mr. Hagen:

Q. There has been some testimony as to these men who you say came on Friday and Saturday, the original cards which you call employees' cards, are they still in existence? A. Yes.

Q. Those are in my office in the brown folder? 6865
A. Yes.

By the Commissioner:

Q. What do those cards contain?

Mr. Hagen: As to what we call the Saturday men.

By the Witness:

A. They contain the clock number, and the men's work card and the number of the badge or clock 6866
number allotted to the men, written on the clock card and on the work card and the stub was torn off and given to him as a means of identification.

Q. There has been some testimony in the case of Marcus Gonzales Navas that there was a pay check found on his body, is that what you refer to as the stub? A. I think this, in order to get his pay he would have to shown that or the badge by way of identification.

Q. Then as I understand it when the man applies and goes to the place they tear off the top of the card with the number? A. The same number as the time card. 6867

Q. They take that check or stub and turn it over to the man? A. Yes.

Q. And the other is left at the office? A. The time card and work card, yes.

Q. You have been asked some questions as to the general rules of the company, I ask you whether it was a rule of your company to give notice at any time to any of the men who sought employment with your company that you would

6868 not be bound by the Workmen's Compensation Law of New Jersey.

(At this point, all of the attorneys objected on the ground that it called for a conclusion and for transactions had with dead men.)

Mr. Hagen: It is asked as to the general rule of the company.

The Commissioner: It would involve the dead men of course.

Mr. Hagen: I want the general rule, I think it is a proper question at this time.

6869 Mr. Jayne: The general rule is incompetent.

Mr. Hagen: I am not asking for testimony as to conversations had with dead men.

Q. Did you ever have any conversations with any men who were employed as to whether or not you would be bound by the Workmen's Compensation Law?

(At this point, all the attorneys objected

6870 to the question.)

Mr. Hagen: It calls for a "yes" or "no" answer.

Mr. Jayne: Nothing can be proven by general rules.

Miss Robinson: They weren't all hired at one time.

The Commissioner: I doubt if that is proper evidence, you might have a general rule and might have exceptions to it.

By Miss Robinson: 6871

Q. You were made Secretary after the disaster? A. Yes.

Q. After December 20th, 1926? A. Yes.

Q. Sometime in 1927? A. Yes.

By Mr. Jayne:

Q. Is this man that was employed then still actually employed? A. No.

Q. When did you discharge him? A. We didn't discharge him.

Q. When did he leave? A. About a month ago. 6872

Mr. Hagen: He is still available.

H. J. ALDRICH, a witness called on behalf of the petitioner in the case of Padro Mitchell, claimant, having been duly sworn, testified as follows:

Direct examination by Mr. Hagen:

Q. I have here Petitioner's Exhibit 1 in the Padro Mitchell case which purports to be a 6873 paper signed by Padro Mitchell showing he had received the sum of $255 compensation disability and ask you if you recall the circumstances attending the signing of that release paper? A. I do.

Q. Tell us the circumstances attending it, how you happened to have Mr. Mitchell sign one of those papers? A. Mr. Mitchell came to my office and asked for compensation and he was quite insistent that he have a settlement of his case. I told him at first the same as I have told others, he better wait until the status of the case was

6874 determined and he would get his settlement the same as the others. To this he wasn't satisfied. He came back to me the second or third time and finally I told him if he wanted a settlement on the basis of Workmen's Compensation I would give it to him. He said he did. I prepared these papers and he signed them.

Q. I have here Petitioner's Exhibit 2, was it part of the form at the time it was signed? A. It is.

Q. Was it also signed by Padro Mitchell? A. Yes.

6875 Q. Was it signed in your presence? A. It was.

Q. Did you explain the meaning of the form on the back? A. I did. I read it to him word by word, had him follow me and told him to thoroughly understand it, if he accepted this settlement he probably would not be able to get any other settlement.

Q. You explained it to him in other words, in addition to those on the back? A. I did.

Q. Did he express a willingness to accept that? A. He did.

Q. What was the amount you paid him? A. The total amount, $255.

6876

Cross examination by Miss Robinson:

Q. In how many payments was this $255 made? A. Our custom of making these payments is usually four weeks at a time, sometimes two and three weeks, according to the condition.

Mr. Hagen: Will you produce the checks?

The Witness: I will.

By Miss Robinson: 6877

Q. Did he work during the time for which you paid him this compensation? A. No.

Q. He didn't work at all? A. Not to my knowledge no. I have the payroll records.

(Mr. Aldrich referred to his files, clock No. 3106.)

A. No he didn't work during the time we paid him compensation. He returned to work April 4th, 1927.

Q. You don't know when the first check was 6878
paid? A. The release was signed February 10th, 1927. It was paid probably three or four days after that. I might have been paid the same day but I don't think so. I wouldn't have a check made out at that particular time.

Q. Did you explain to him what taking Workmen's Compensation means? A. I did.

Q. What did you explain? A. I explained just as I wrote on this release.

Q. You read exactly what you wrote on the back? A. To him, I did.

Q. Your explanation was the writing on the 6879
back? A. I gave him such explamation as he wanted in answer to his questions.

Q. Did he ask you any questions? A. He did.

Q. What questions did he ask you? A. I cannot remember now the tenure of his questions.

By the Commissioner:

Q. The questions bore on the proposition of compensation? A. Yes on this release.

6880 By Miss Robinson:

Q. He didn't read it himself? A. He did.

Q. He read over all of it? A. Yes.

Q. All sides of the thing? A. Yes.

Q. He understood it? A. Yes.

Q. He said he understood it? A. Yes and furthermore it was discussed in the presence of another party that refused to sign it, Aaron Cooper and both men asked questions about it.

Q. So far as I would like to see those checks before I finish my cross examination, if Mr. Aldrich can come back at the next hearing? A.

6881 I will produce those checks.

Q. You looked at this slip or payroll record offered in evidence by petitioner, what is the notation on that? A. To show he didn't work during that period.

Q. What are the exact words? A. "Reported for work December 18, 1926, ship not arrived; reported for work December 19, 1926, ship not arrived."

By the Commissioner:

6882 Q. By "ship not arrived" you mean the ship which was to be unloaded? A. Yes.

Q. Which these men were to unload? A. Yes.

By Miss Robinson:

Q. Does that slip or any other slip indicate whether or not they punched the clock when they arrived on December 18th, 1926? A. No they did not.

Q. Did they punch the clock on December 19th, 1926? A. No they did not.

Q. You remember at the Limitation Proceeding Trial a number of brass or metal badges were produced with a number on, when did the men get those badges? A. When they came to work. 6883

Q. They didn't get them on December 18th did they? A. No.

Q. Or on December 19th? A. In lieu of the badge they got a stub torn off the time card issued with the same number as on the badge. The badge is given them when they are on duty.

Q. When they actually start to work? A. No each day, they are turned in at the end of each day and given to them the next morning.

Q. When did they get those badges? A. When they come in and go to work they always get a slip or stub from the time card. 6884

By Mr. Hagen:

Q. You had nothing whatever to do as I understand it with the assignment of these men to any job? A. No.

Q. That was left to Mr. McHale? A. Yes to the foreman.

H. J. ALDRICH, a witness on behalf of the petitioner in the case of Bernard Lang, claimant, having been previously duly sworn, testified as follows: 6885

Direct examination by Mr. Hagen:

Q. I show you a paper marked "Petitioner's Exhibit 2", in the Bernard Lang case and ask you if you recall the circumstances attending the signing of this by Bernard Lang? A. I do.

6886 Q. What is that form? A. Workmen's Compensation Form with a General Release typewritten on the back.

Q. How did you happen to have any dealings with Mr. Lang in reference to Workmen's Compensation? A. The circumstances in the Lang case were very much the same as in the other case. He desired a settlement and wanted Workmen's Compensation. I endeavored to induce him to wait until the courts had settled the status of the case but he didn't want to wait, said he wanted some money. I asked him if he wanted to take
6887 the Workmen's Compensation and he said he did. I had the papers made out and thoroughly explained to him and read the papers and he signed them himself of his own free will.

Q. Did you explain them to him? A. I did.

Q. Did you explain that in signing he was signing away his rights? A. I did.

Q. Did he work after the accident? A. He did.

Q. Do your records show when he started to work after the accident? A. Yes.

Q. When? A. The week ending February 12th, he worked all that week, forty-eight hours.

Q. What was his rate of pay before the acci-
6888 dent? A. Seventy cents an hour.

Q. At what rate of pay was he taken back? A. Seventy cents an hour.

Q. Subsequently his rate of pay was changed to forty-eight cents an hour? A. Yes at his own request he didn't care to work in the press room any longer.

Q. What is the press room work? A. Our presses where the Linseed meal is heated to quite a high temperature. It makes the presses

and machinery quite hot and it is a hot place to work. The weather was mild, he worked the week ending April 23rd, the last week he worked in the pressroom. The weather was hot and he preferred to work outside. He took a laborer's job in preference to the pressroom. 6889

Q. What were his average earnings before the accident? A. Thirty dollars and forty-six cents per week.

Q. And after the accident what were his average earnings? A. Twenty-eight dollars and seventy-six cents a week.

Q. He took that outside job at forty-eight cents an hour at his own request? A. Yes. 6890

Q. How much did he receive by way of settlement? A. His total compensation was about eighty-five dollars.

Q. That was based on the Workmen's Compensation rate? A. Yes.

Q. What is that rate? A. A maximum of seventeen dollars a week.

Q. For disability? A. Yes, under the New Jersey Workmen's Compensation Law.

Q. Do you recall how those payments were made? A. I would have to see the checks, I would say it was made in three payments according to our custom. 6891

By the Commissioner:

Q. You speak of the Workmen's Compensation under the laws of New Jersey? A. Yes. I think one check was for $33 and one for $51. (Looking at two checks which Mr. Hagen had handed him.) These are not the compensation checks.

6892 By Miss Robinson:

Q. What is the check for $51 for, he didn't get $51 a week did he? A. The thirty-three dollar check was funds advanced him right after the accident.

By Mr. Hagen:

Q. You did that with all the men in the accident? A. Yes.

Q. You advanced a week's wages to each? A. Yes.

6893

Cross examination by Miss Robinson:

Q. What is the check for $51 for, would that be three times the $17 under the Workmen's Compensation Law? A. It is quite possible, yes.

Q. In other words he got $51 for compensation? A. He got $85.00.

Q. How do you figure that? A. I have to look at the records.

Q. Have you the payroll abstract of Mr. Lang? A. Yes.

Q. May I look at it? A. Yes.

6894 Q. Did you say he only got three week's compensation according to your records? A. Five weeks.

Q. At seventeen dollars a week, eighty-five dollars? A. Yes.

Q. You didn't give it to him all at once? A. No, it isn't usual, we don't pay it in a lump sum.

Q. When you gave him the $33, did you tell him what it was for? A. If that is the $33 check, no, not at that time, the time I told him was when I gave him the release.

Q. What is your opinion? A. My opinion is 6895
that the $51 check may have been taken into consideration but the $33 check I don't think that was.

Q. The $51 check is dated January 20th, when did he sign the release? A. February 24th.

Q. Five weeks after the accident would be about the end of January for five weeks' compensation? A. About January 20th, that would be taking out a week for waiting period, about six weeks.

Q. Was he paid for that week? A. Not in compensation.

Q. He didn't get anything for that week? A. 6896
No.

Q. He was out six weeks and got five weeks' compensation? A. That's the scale, yes.

Q. Did you explain that to him? A. I did.

Q. That he wasn't getting paid for that one week out at all? A. Everybody understands that.

Q. Everybody understands it without even being explained about it? A. Surely.

Q. Your records show he didn't go back to work until the week ending February 12th, did he immediately say to you he wanted to go into this work where he got forty-eight cents an hour 6897
instead of seventy cents an hour? A. No, that was along in April as the records show.

Q. On April 23rd he came to you and said he wanted less money? A. Yes, he didn't want to work in the press room. That's the general complaint in the spring, they want an outside job when the weather gets warm.

Q. I suppose you know he speaks very good English? A. Slightly broken but I have no difficulty in talking to him.

6898 Q. He reads and writes so far as you know? A. Yes, he wrote his name.

Q. He reads English very well? A. I should judge so.

Q. He understood every word of this? A. Yes.

Q. Did you know how long he had been in this country when he signed the release? A. No.

Q. You didn't inquire? A. No.

Q. Do you know as a matter of fact he had come from Germany and had been here one year? A. I don't know.

Q. When he came to you did he say he wanted
6899 compensation or what did he say? A. He wanted a settlement of his case.

Q. He didn't say he wanted Workmen's Compensation particularly did he? A. I cannot testify to the words he used, my impression is he did.

Q. From what did you gain that impression? A. The impression is the same as with Padro Mitchell and Aaron Cooper.

Q. They weren't there at one time? A. No, different times.

Q. What in particular did he say to you from which you inferred he wanted Workmen's Compensation? A. Because he wanted money.

6900 Q. When was this release signed? A. February 24th.

Q. Do you remember having Bernard Lang signing this? A. No I don't remember anything about those, I had nothing to do with them, they are New York State papers.

(Miss Robinson exhibited certain N. Y. State forms to the witness.)

Q. Do you know who did have anything to do

with signing those? A. I don't know anything about those. 6901

Q. Explain to me how it is this release was signed several weeks after you gave him the money for compensation? A. You are getting back to the same question, I have to see my records.

Q. Can you tell from your records why it is Lang was discharged on May 14th, 1928? A. The reason doesn't appear on these records, my recollection is that it was for insubordination.

Q. What do you mean? A. He refused to do what was required of him.

Q. Did you discharge him? A. No, the foreman did. 6902

Q. What was your impression was the cause of the insubordination? A. I have to refer to the records to tell you that.

Q. Your general rule for the discharge of employees is insubordination? A. No. I am giving you my impression now, without referring to the records I couldn't tell you.

Q. Do you know this fellow Lang? A. I know him to see him, yes.

Q. Had he ever been guilty of insubordination prior to the accident? A. Not to my knowledge, he might have been. 6903

Q. This pay roll record is up to October 1st, 1927 beginning the week ending February 12th to the week ending October 1st, 1927 and there is a notation on here "Discharged May 14th, 1928", where is the 1928 record? A. It evidently isn't here.

Mr. Hagen: They only went down to a certain date. I only asked for them for a certain period.

6904 By Miss Robinson:

Q. He evidently worked from February 12th, 1927 to May 14th, 1928, more than a year? A. It is possible he worked there a long time.

Re-direct examination by Mr. Hagen:

Q. Referring to Petitioner's Exhibit 3 which Miss Robinson referred to, tell us just what the form is? A. It is the New York State Workmen's Compensation Labor forms. The first sheet is the general letter calling attention to the case
6905 which is usually sent out by the Department, the second is their form showing the employee's report of injury, he makes his report to the Bureau of Compensation himself, the New York State Bureau, the pink form which is the New York State Form C-4 is the form generally made out by the physician showing his condition, giving the details of the accident. The last form is not part of it.

Q. It is the regular form of the New York State Workmen's Compensation? A. Yes.

Q. The regular form of claim made out by the
6906 employee? A. Yes.

Q. Did you have any trouble with Lang personally? A. No.

Q. Was he a trouble maker or anything of the sort? A. Not to me personally.

Q. Did you have any reports as to him? A. Do you want me to give my impressions?

Q. Yes as you recall them? A. I recall he got more or less dissatisfied, began to loaf on the job and for that reason he was discharged. He had an altercation with the foreman as to the matter and as I remember it the matter was re-

ferred to me, if for any reason we were under obligations to keep Lang on the job and I said no. 6907

Q. That's your recollection? A. Yes, without the records, I cannot say further.

WILFRED DE BETHAN, a witness on behalf of the petitioner in the Hamilton case, having been duly sworn, testified as follows:

Direct examination by Mr. Hagen:

Q. You were a witness in the case of Eric Martin? A. Yes. 6908

Q. You testified you were a half-brother of Eric Martin? A. Yes.

Q. Where are you employed now? A. Spencer Kellogg.

Q. Were you employed there on December 20th, 1926, the day of the accident? A. Yes.

Q. You knew some of the men that worked there personally? A. Yes.

Q. Give us the names of some of the men you knew that worked at Spencer Kellogg in December, 1926, some of the men who lost their lives? A. Adolphus Matthias, Uriah Pusey, Joseph Hamilton, David Clark, James Alexander, Eric Martin. 6909

Q. Those men, what were their jobs at Spencer Kellogg? A. Pressmen.

Q. Were they white or colored? A. Colored men.

Q. Joe Hamilton, where did he work, did he work near you? A. Right in front of me on the same machine.

Q. Did you know him quite well? A. Yes, on the job there.

6910 Q. Did he ever have occasion to invite you out to any affair? A. Once he did.

Q. Did you ever hear from Joseph Hamilton as to whether he was married or single? A. He never told me, he said he was going to get married sometime.

Q. Do you know about when that was? A. Not that I can remember, if I am not mistaken he gave me an invitation, I am not quite sure about that.

Q. Was it very shortly before the accident? A. Yes.

6911 Cross examination by Miss Robinson:

Q. How long have you known Joseph Hamilton? A. I really couldn't specify, a couple of months.

Q. A couple of months before the disaster? A. Yes.

Q. About November, 1926? A. No, longer than that.

Q. How long before? A. About two or three months before that.

Q. Two or three months before the accident? A. Yes.

6912 Q. You only knew him through working with him? A. Yes.

By the Commissioner:

Q. You say this man worked in front of you? A. Yes on the same machine I worked on.

Q. Do you know anything about his private life at all, did you go to his home? A. No.

Q. Beyond your acquaintance in the shop you didn't know anything about him? A. No.

JAMES TROTTER, a witness on behalf of the petitioner, having been duly sworn, testified as follows: 6913

Direct examination by Mr. Hagen:

Q. What is your address? A. 433 East 118th Street, New York City.

Q. On December 20th, 1926, at the time of the sinking of the "Linseed King" were you an employe of Spencer Kellogg? A. Yes.

Q. What was your employment? A. I was working in the trimming room.

Q. You appeared as a witness for Mr. Axtell in this proceeding? A. Yes. 6914

Q. Were you employed at that time for Spencer Kellogg? A. No.

Q. Are you employed by Spencer Kellogg now? A. Yes.

Q. How long have you been employed this last period? A. February 13th gone was a year.

Q. I want the location of the pier referred to as the 95th and 96th Street pier, at the foot of what street was that pier? A. At the foot of 95th Street.

Q. As you go down 96th Street, if you walked straight out what pier would you come to, what is it called? A. That's where the Street Cleaners dump the garbage. 6915

Mr. Hagen: On page 8 of Sanborn's Map of the New York Harbor, I offer in evidence page 8 on which appears the location of the piers, with leave to substitute a photostatic copy of the page. I call attention to the fact that the pier to which Mr. Trotter has testified is pier 116.

6916 Miss Robinson: I object, he didn't identify the number.

By Mr. Hagen:

Q. Will you kindly mark the pier at which this boat landed?

Miss Robinson: How can he designate any such thing on a map he is a laborer.

A. I can read it.

6917 The Commissioner: I will allow it.

Miss Robinson: The witness isn't qualified to read maps, it hasn't been shown he has any experience in the Department of Plants and Structures.

By Mr. Hagen:

Q. Tell us what your experience has been in reading maps? A. I think I can read it perhaps better than Miss Robinson.

By Miss Robinson:

6918 Q. Have you ever read a map like that before? A. No but I have read many maps.

Q. What maps have you read? A. Maps of the world.

The Commissioner: I have allowed the questions.

The Witness (looking at the map referred to): The one marked 116 is the 95th Street pier.

By Mr. Hagen: 6919

Q. And the one marked 117, what is that? A. That is the Street Cleaning Dump.

Mr. Hagen: I offer the page in evidence with leave to substitute a photostatic copy.

Q. On the morning of the "Linseed King" disaster Mr. Trotter on which side of the pier did the motorboat "Linseed King" lie? A. On the northern side.

Q. How was she lying to the dock? A. Along side of the dock with the bow pointing to the 6920
Jersey shore.

Q. Was she lying alongside the end of the dock with her bow to the Jersey shore? A. She was lying along side the end of the dock, yes, with her bow to the Jersey shore.

Q. Was she at any time near the land end of the dock? A. No, the land end is far back.

Q. Where was she, toward the outer end? A. The bow was about at the end of the northern side, the stern was facing inside.

Q. Do you know how long the pier is, roughly? A. I guess about five to six hundred feet. 6921

Mr. Hagen: It measures five hundred six feet exactly.

Q. Are there several ways to go from 96th Street to the pier?

Miss Robinson: It is wholly immaterial, incompetent and irrelevant. He could come from uptown, downtown or New Jersey.

6922 A. From the 96th Street Subway we go down the line to the railway track then walk one block down along the track and then toward the westward, on the pier. When we get on the track you turn to the left and go a block and then turn to the right.

By Mr. Hagen:

Q. Does 95th Street lead directly to the pier? A. You can go down 95th Street to the track then there is a small track, a foot path that has been trodden by feet.

6923 Q. It is not a sidewalk? A. No, a small track you can go along that track and go down an incline to the river track.

Q. Tell us about that pier, what sort is it, open or closed. A. Very much open.

Q. Is there any house on that pier? A. The Burns Coal building on the left and a cement storing place on the right to the shore end.

Q. Are there any lights on that pier? A. No lights whatsoever.

Q. On the morning of the disaster were any automobiles on the pier with headlights burning?

6924 A. I didn't see any.

Q. You were on the pier? A. I was, yes.

Q. That Burns house you refer to, is that on the pier? A. On the side.

Q. Near the land? A. Yes, the Burns place is on the left, the cement storing place is on the right.

Q. Is this a picture of the pier at 95th Street or not? A. It looks like it I cannot very well see, it looks like it.

Q. Does that show the Burns house there? A. 6925
This is the Burns house here.

(The witness indicated on the picture.)

Q. Is this place I have marked with an "A", the Burns Coal place? A. Yes.

Mr. Hagen: This picture was taken December 22nd after the remains of the "Linseed King" had been placed on the pier. I offer the picture in evidence.

Miss Robinson: I object, the photog- 6926
rapher is not here, I want him to come and identify it.

Mr. Hagen: I was present at the time it was made.

Q. Does that pier as shown here on this photograph represent the pier as it looked on the morning of December 20th, with the exception of the presence of the boat and vehicles on it? A. Yes but on this side there was a slope, a slight incline on this side of the pier on the front end, near the water edge.

Q. That is not there now? A. No, it was there 6927
at the time.

Q. Does this show the pier as it was at the time so far as you can see? A. As far as I can see it does.

Mr. Hagen: I offer it in evidence.

The Commissioner: I cannot receive it there is an objection, get the photographer.

Mr. Hagen: I will refer to the two exhibits which Mr. Axtell offered at the trial

6928 being photographs of the pier, I believe I have the pictures, I want the Court to take judicial notice of the two photographs. I refer to the three advertisements which appeared in the paper and make them a part of the record here.

Q. Describe the motorboat "Linseed King" as to color? A. It was dark in color.

Q. Do you know what the color of the hull was? A. Black.

Q. That is the way the boat was at the time of
6929 the accident, black hull? A. Yes, it is up there now.

Q. As I understand it the boat was a dark color? A. I said the hull was black.

Q. Did you know any of the men on the motorboat "Linseed King" on the morning of the accident? A. I knew several men on it, sure.

Q. Give us the names of those whom you personally knew? A. Balfour Corriette, Charles Burns, Benjamin Samuels, I knew one fellow called Clark, I knew another Mexican fellow called Munoz or some name of the kind; another man called Pusey.

6930 Q. What was Burns' occupation? A. He worked with me in the trimming room.

Q. Was he white or colored? A. Colored.

Q. Where did he come from? A. From British Honduras.

Q. Corriette, was he white or colored? A. Colored.

Q. What was his occupation? A. Pressman.

Q. Where did he come from? A. Dominico, British West Indies.

Q. Did you know him? A. Yes.

Q. In Dominico? A. Yes. 6931

Q. And Clark, was he white or colored? A. He was colored.

Q. What was his occupation? A. Pressman.

Q. Where did Munoz come from. A. I think from Antiqua.

Q. What was his color or nationality? A. I think he was a Mexican. He was a Spanish speaking man.

Q. Pusey, white or colored? A. Colored.

Q. His occupation? A. Pressman.

Q. What country did he come from? A. I cannot say. 6932

Q. Roberts, you didn't testify you knew Roberts but I think you knew him? A. Yes he was a chauffeur in the yard.

Q. He was white? A. Yes.

Q. Benjamin Samuels, was he white or colored? A. Colored.

Q. What was his occupation? A. He was a laborer in the filling department.

Q. Where did he come from? A. Antiqua.

Cross examination by Miss Robinson:

Q. Do you know whether any of these men, 6933
Burns, had any white blood in him at all? A. Whether he had or not he was a colored man.

Q. Do you know? A. No I don't.

Q. Do you know if Samuels had any white blood in him? A. I don't.

Q. Do you know if Corriette had any white blood in him? A. No, not as far as I can trace.

Q. Do you know if Pusey had any white blood in him? A. He was too dark for that.

6934 By Mr. Kennedy:

Q. How long had you been working for these people before the accident? A. I joined the company in the month of August, the accident happened in December.

Q. What were your duties on the boat? A. I was going to work.

Q. How often did you go over on that boat? A. Every day.

Q. Had it been running steady to the day of this accident? A. It ran steady all along.

6935 Mr. Hagen: I think we ought to note an objection, we haven't the question of liability before us.

By Mr. Kennedy:

Q. You knew a number of the people on the boat that day did you? A. Yes, I gave the District Attorney an estimate at the time.

Q. Did you know a number of them? A. Yes, some of them I can tell too by the pictures but I do not know the names of all.

6936 Q. You say there were a number whom you recognized that went over every day? A. Yes.

Q. Did you see a number of strangers there that day that were never on the boat before with you, before that day? A. I wouldn't say if there was or not.

Q. Did you see a number you didn't recognize as having gone over with you before? A. You cannot recognize everybody on the boat.

Q. Did you see a number of strangers on that boat with you that you had never seen before? A. I presume they must have been there was a

ship lying alongside the Spencer Kellogg dock. 6937

Q. You never saw some of them before? A. I won't say I got to say what I saw.

Q. Where did you live at that time? A. 151st Street I don't remember if it was 300 or 301.

Q. Do you know what time the boat got into the pier that morning? A. I don't know exactly what time it got there that morning. I know when it left.

Q. What time did you get there? A. I got there about six twenty-five.

Q. The boat was there then? A. Yes.

Q. Was it dark when you got to the pier? 6938
A. Pretty dark.

Q. You didn't leave your house before day light? A. It was pretty dark, how could I leave before.

Q. Do you remember? A. I said it was pretty dark there that morning.

Q. Did you leave your house before daylight? A. I left at six that morning.

By Mr. Hendler:

Q. On December 20th, 1926, the date of the accident, do you remember about what time you left your home? A. About six o'clock I said. 6939

Q. How long does it take you to get to the foot of 96th Street, usually? A. It all depends on the connections I make.

Q. How do you travel? A. I travelled by the "L" then.

Q. How far is your home from the "L" station? A. Just at the "L" station.

Q. Did you on the morning of December 20th take the "L" to 96th Street? A. I did.

Q. You say your home was right at the "L"

6940 station? A. I told you I was either living at 300 West 149th Street or 151st Street, I lived at both places.

Q. On the morning of December 20th, 1926, where did you live? A. I think 151st Street.

Q. If you lived in either one of the places you were accustomed to take the "L"? A. Yes to the 99th Street Station.

Q. Then you would walk to the pier? A. Yes.

Q. You remember it was dark when you got to the pier? A. Yes.

Q. And the boat was already in? A. Yes.

6941

Deposition of William Ice.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

The Petition of SPENCER KELLOGG & SONS, INC.,
6942 as owner of the Motorboat "LINSEED KING", her engines, etc., for Limitation of Liability, Civil and Maritime.

Pursuant to notice, dated October 30th, 1928, appeared William Ice, one of the claimants in person and through C. Spencer acting for Silas B. Axtell, proctor for said claimant and also appeared the petitioner by and through H. C. Hughes of the firm of Lockhart, Hughes & Lockhart of

Deposition of William Ice.

Galveston, Texas, acting for Bigham, Englar & Jones, proctors for said petitioner and it was stipulated that the testimony of said defendant William Ice might be taken before John C. Herring, County Clerk, of Aransas County, an officer duly authorized to administer oath. It is further stipulated that signing, sealing and other formalities in respect to the taking of these depositions, is hereby waived, and the said William Ice being first duly sworn testified as follows: 6943

By Mr. Spencer:

Q. What is your name? A. William Ice. 6944

Q. Where do you llive? A. Lilbourn, Missouri.

Q. How long have you lived at Lilbourn, Missouri? A. 18 years.

Q. Where are you staying temporarily? A. On United States Survey Boat, Rockport, Texas.

Q. Are you employed on this boat and if so by whom? A. Yes, by the United States Engineer Department, Galveston Office.

Q. How long have you been in this employment? A. About 8 months.

Q. Where were you on or about the 20th day of Dec., 1926? A. In Harlem Hospital, New York City, after the wreck of the "Linseed King". 6945

Q. What were you doing in New York City, immediately prior to this time? A. Looking for work.

Q. Had you applied to anyone for work at this time? A. I had applied to The Spencer Kellogg & Company for work a few days before.

Q. When you first applied to Spencer Kellogg & Company for work did they engage your service? A. They told me to come back the next morning.

6946 Q. Did they give you anything as an identification to when you should return the next day? A. They gave me a small card with a number on it.

Q. Where is the Spencer Kellogg & Company plant from New York City? A. Across the Hudson River.

Q. What is the means of transportation from New York City to the Company's plant? A. On a boat.

Q. To whom does this boat belong? A. Spencer Kellogg & Company.

6947 Q. Did you pay for your transportation on this boat from New York to the plant? A. No.

Q. Did the card which was given you entitle you to free transportation on this boat? A. Yes.

Q. You were not in the employ of the Spencer Kellogg Company when you made this return trip? A. I was not.

Q. When you visited the plant the second time, what answer was given you about employment? A. To come back the next morning.

Q. Did you return the next morning? A. I started.

Q. Why did you not complete the trip? A. Be-

6948 cause of the fact that the "Linseed King" wrecked.

Q. Was the "Linseed King" the name of the boat in question upon which you were being transferred? A. Yes.

Q. At the time of the wreck of this boat was you still in possession of your numbered card? A. Yes.

Q. Did you understand that this card was given to applicants for employment for free transportation on the Company's boat? A. I was of the opinion that that was one of the purposes.

Q. Were you ever employed at this time by Spencer Kellogg & Compan ? A. I was never employed by the Spencer Kellogg Company. 6948

Q. At approximately what position in the Hudson River did this boat wreck? A. About the center.

Q. What was the cause of this wreck?

Objection: Petitioner objects to the question and answer sought for the reason that the question of liability has already been settled in this case, and the testimony would therefore be irrelevant and immaterial. 6950

A. The boat hit an ice cake which knocked a hole in her bow.

Q. Did this boat sink?

Petitioner makes some objection as to previous question and it is stipulated that the same objection may be considered as lodged against all questions going to the cause of the sinking of the "Linseed King".

A. It was completely submerged. 6951

Q. Was this boat heavily loaded with passengers? A. It was very heavily loaded with passengers.

Q. What action was taken by the passengers generally at the sinking of the boat?

Petitioner objects to the question and answer sought for the same reasons as first urged herein and it is stipulated that objections may be considered as lodged to all

6952 questions with reference to the fitness and overloading of the boat without repetition.

A. Each man tried to save himself.

Q. Was the "Linseed King" adequately supplied with life saving equipment?

Objected to as calling for a conclusion of the witness and for other reasons heretofore advanced.

A. No.

Q. What action did you take toward saving
6953 your life? A. I made an effort to get out of the cabin and away from the rest of the bunch.

Q. Did you personally have access to any life-saving equipment? A. Not to my knowledge.

Q. In what manner did you leave the boat? A. I left through the starboard door by catching the top of it as my feet slipped on the floor and pulled myself up. The boat was on her side.

Q. In this position were you in or out of the water? A. I was in water knee deep.

Q. What became of you when the boat submerged? A. I went to a small sized ice cake as
6954 soon as I got on the outside of the boat.

Q. Did you get on top of this ice cake? A. Yes.

Q. How long did you remain on this ice cake? A. A few minutes.

Q. Why did you leave it? A. Another fellow swam to the ice cake, it would not hold us both, he was in bad shape, I was not satisfied with my position.

Q. Where did you go from this ice cake? A. I went to a group of men who I believed were standing on the submerged boat.

Q. Were you transported to these men or were you swimming? A. I was swimming and struggling over small cakes of ice. 6955

Q. Did you find these men to be on the submerged boat? A. Yes.

Q. How long did you remain in this position? A. Until a tug boat picked me up.

Q. About how long from the sinking of the "Linseed King" before you were picked up by the tug boat? A. About an hour.

Q. What was your physical condition at the time you boarded the tug boat? A. I could hardly walk. Could not say a word with more than one syllable, did not have the complete powers of comprehension. 6956

Q. Where were you taken by the tug boat? A. To a pier which I believe was 125th Street Pier.

Q. Where did you go from there? A. An ambulance took me to Harlem Hospital.

Q. What was your physical condition at the time you reached the hospital? A. I was very weak and very nervous.

Q. Were you attended by physicians while in the hospital? A. I was given a physical examination but no medicine.

Q. How long did you remain in this hospital? A. Until Wednesday of the same week. 6957

Q. Where did you then go? A. I went to my room at 160 East 25th Street.

Q. At the time when you left the hospital were you physically able to do ordinary labor? A. No.

Q. How long after returning to your room before you were able to do work? A. It was only a few days before I tried work but found that I could not stand it.

6958 Q. During your stay in your room were you ever attended by physicians? A. No.

Q. Did you again return to the hospital? A. About February 7th I went to Bellevue Hospital with Pleurisy Pneumonia.

Q. Had you done any work from the time that you first went to your room until you went to Bellevue Hospital? A. Yes, I worked about two days for the William Spencer Stevedore Company. I could not stand the work and layed off a few days after which I began stevedoring for the B. & O. Railroad, which I did until I got sick
6959 with the Flu for about a week after which I work for the B. & O. Railroad until I got pneumonia a day or two before I went to the Bellevue Hospital.

Q. In the above named employments were you exposed to undue adverse weather conditions?

Objected to as calling for a conclusion of the witness.

A. I was working in open air in shelter such as barges piers and box cars.

Q. Did you suffer any exposure that would have
6960 caused your having pneumonia?

Objected to on the same ground as last made.

A. No.

Q. What cause did contribute to your having pneumonia?

Same objection.

A. From periods of weakness and due to gradu-

ally declining strength. I think it was due to 6961
the submerging of the "Linseed King".

Q. How long were you confined from pneumonia? A. About one month, including the time after I left the hospital while I was convalescent.

Q. At the end of this month's time were you able to resume work? A. I went back to work.

Q. From the time of the wreck of the "Linseed King" until you went to work permanently was about how long? A. About two months and one-half.

Cross examination by Mr. Hughes:

Q. How long had you been in New York prior 6962
to the wreck of the "Linseed King"? A. One month.

Q. Had you had any regular job prior to the time the "Linseed King" was wrecked? A. I had worked on the Government Fleet of Ships at Staten Island for two weeks.

Q. What were your wages while working for the Government? A. $60.00 a month and expenses.

Q. Why did you leave this employment? A. The captain ordered scraping paint on the outside of the ship. Due to weather conditions and cloth- 6963
ing not being adequate I could not do the work and quit.

Q. Did you have any other job prior to the sinking of the "Linseed King"? A. No.

Q. What was told you on the second morning at the plant of Spencer Kellogg & Company? A. A group of which I was one was told to report at 95th Street Pier about 6:20 Monday morning.

Q. Is that all that was said to you? A. We were told that the ship was not in at that time.

6964 Q. What character of labor was you supposed to do for Spencer Kellogg & Co.? A. I was hoping to help unload a ship.

Q. You were told that the ship had not come in and that you should report at 6:20 the next morning, is that correct? A. I was told that the ship had not arrived and was told to be at 95th Street Pier, Manhattan, about 6:20 the next morning.

Q. Had you ever done stevedoring work in New York prior to this time or anywhere else? A. No.

6965 Q. After coming out of the Harlem Hospital how many days did you stay in your room without attempting to work? A. About a week.

Q. How many days did you try work at first? A. I worked one day, missed about two and worked one more.

Q. Then how long did you lay off? A. A few days.

Q. What was the name of the first company that you tried to work for? A. William Spencer Stevedore Company.

Q. Where was this? A. St. George, Staten Island.

6966 Q. You then worked at Pier 22, Manhattan. Who was you working for there? A. B. & O. Railroad Company.

Q. About how long were you working for the B. & O. before you went to the Bellevue Hospital? A. I judge it was about three weeks.

Q. You mentioned in your direct examination about having the Flu, was that before or after you worked for the B. & O.? A. I worked for the B. & O. both before and after I had the Flu and I had the Flu before I had pneumonia.

Q. Did you go to the hospital with the Flu? 6967
A. No.

Q. What month of the year was it that you were doing the stevedoring work for the B. & O.? A. January and February. I also worked for them after I was in the Bellevue Hospital.

Q. Did you go from your home in Missouri, direct to New York or had you worked elsewhere? A. I went from my home to New Orleans where I got a job on a ship going to Philadelphia, and from Philadelphia to New York.

Q. What were your wages as a stevadore in New York? A. $.50 an hour.

Q. What did you average per week while doing 6968
this kind of labor? A. About $27.00 a week.

Deposition of Harry A. Gold.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of 6969

The Petition of SPENCER KELLOGG & SONS, INC., as owner of the Motorboat "LINSEED KING", her engines, etc., for Limitation of Liability, Civil and Maritime.

BE IT REMEMBERED that on the 24th day of October, 1928, at Suite 400, Law Building, 139 North Broadway, Los Angeles, California, before Her-

6970 bert V. Coffey, a Notary Public in and for the County of Los Angeles, State of California, the claimant Harry A. Gold, one of the claimants in the above proceeding, appearing in person and by his representative, Joseph L. Fainer, Esq.; the petitioner appearing by their representative, L. K. Vermille, Esq., of Los Angeles, Calif.; the claimant, Harry A. Gold, having appeared pursuant to a Notice of Taking Deposition by Silas B. Axtell, Esq., proctor for said claimant, to be examined (de bene esse) pursuant to Sec. 863 of the Revised Statutes of the United States, the following pro-
6971 ceedings were had, to wit:

HARRY A. GOLD, being first duly sworn as a witness, testified as follows:

Direct examination by Mr. Fainer:

Q. Your name is Harry A. Gold, is it? A. Yes, sir.

Q. And where do you live at the present time? A. At the present time? 2932 Marne Avenue.

Q. How do you spell that? A. M-A-R-N-E.

Q. And is that in the City of Los Angeles? A. Yes, sir.

6972 Q. Now, on the 20th day of December, 1926, were you in the City of New York? A. December 20th, 1926? Yes, sir.

Q. And on that day in question did you board a launch, the "Linseed King"? A. Yes, sir.

Q. At what time of day did you board this boat? A. Well, something around six o'clock in the morning. It was dark yet.

Q. And what was the purpose of your boarding that boat? A. I was down there for the purpose of applying for a job.

Q. Were you employed at the time that you boarded this boat? A. No, I never was employed. 6973

Q. I see. Where were you going to apply for a job? A. To New Jersey, acress the river from New York, Spencer Kellogg & Sons.

Q. And they are in what part of New Jersey, what city? A. Just directly across from 96th Street, that is where their plant is located.

Q. And were there any other people on board this ship called the "Linseed King"? A. Yes, the ship was full.

Q. What kind of a ship was it? A. A launch.

Q. Do you know the length of the ship? A. Forty or fifty feet long. 6974

Q. How many people, approximately, were on this ship? A. There must have been around a hundred—it was very crowded.

Q. How did you happen to go on this ship? A. Well, a fellow told me that I could get work over there. This was on a Friday, December 17th and I went down there on this launch. Friday, December 17th, was the first day that I was on that launch.

Q. And you went across the bay? A. Yes.

Q. What did you do the first day you got across the bay? A. When I got across I went in there and the man in charge, whoever he was, and I asked him if he had work, and he says, "No". 6975

Q. All right, I do not want conversation. You went there and applied for work. And were you told to come back? A. They said, "Come tomorrow, maybe. Try again tomorrow."

Q. Did you try the next day? A. Yes, I did.

Q. And what happened the next day? A. They told me the same thing.

Q. And the next time was Sunday, what day

6976 was that? Was that the day of the accident? A. No, Monday was the day of the accident.

Q. You went Sunday, and what did they tell you then? A. They told me to try again Monday.

Q. Now, on those three days that you were on the launch called the "Linseed King" were you asked to go on that boat? Did you pay any money on that boat? A. No.

Q. Well, how did you happen to go on that boat? A. Well, they take anybody over there, if you are looking for a job they take you over on that boat.

6977 Q. In other words, the "Linseed King" was used for the purpose of taking applicants across the bay in order for them to seek positions from that company? A. Yes.

Q. Now how many people were there, approximately, on this boat on Monday? A. Well, there must have been eighty or ninety, at least.

Q. What happened, if anything, while you were on that boat? A. Well, we got out in the middle. Do you want the whole story as it is?

Q. Yes. A. We got on the boat and I heard one fellow say——

Q. I don't care what anybody says—what hap-
6978 pened? A. There was a panic on board the boat.

Q. And what caused the panic? A. This fellow said the boat was leaking.

Q. All right. And then what happened? A. They started to break windows to get out.

Q. Was it enclosed? A. Yes.

Q. And did they get out? A. Well, quite a number got out before I did.

Q. I see. Was the boat sinking at that time? A. The boat appeared as if it was sinking but I couldn't see any water come in, but it looked as though it went under.

Q. Well, did the boat actually sink afterwards? 6979
A. Yes, and I sunk with it. I went down with it, holding on the side.

Q. Now how long after you had gotten on this boat did this happen? A. I don't know exactly—fifteen minutes, maybe.

Q. While you were trying to get out, were you in a panic, too? A. I was trying to get out with the rest.

Q. And what was your mental attitude, were you horrified or what? A. No, I wanted to get out. I was inside the boat at the time. Course, naturally, I wanted to get out.

Q. Were you scared? A. Positively. 6980

Q. Now after you got out, what happened while you were in the water? A. I got hold of the side of the boat and the boat sank. I sank with the boat under water.

Q. And did you come up again? A. Yes.

Q. Did you have any life preserver on you? A. No.

Q. Were you supplied with a life preserver? A. There were a lot on the boat but there were only two who grabbed them, the captain and his mate.

Q. How long were you in the water? A. About 6981
an hour and a half.

Q. Were you rescued? A. Yes.

Q. Who rescued you? A. Some sailors with a big ship.

Q. All right. Was the water very cold? A. Very cold.

Q. What was your condition when they rescued you? A. I was unconscious.

Q. You were unconscious? A. I was numb, I didn't know where I was until after I was brought in.

6982 Q. Now what was your earning ability or capacity prior to this occurrence? A. Just before the accident my earning capacity was $35 to $38 a week.

Q. And were you earning that for a long period of time, averaging it? A. Yes.

Q. What kind of work were you doing? A. I was doing different kinds of longshore work—heavy work.

Q. After you were taken out of the water what happened to you after you were brought on the boat? A. They took and put me on a hot boiler in
6983 the ship they rescued me in and then they brought me in an ambulance to the Columbia Hospital.

Q. How long were you in the Columbia Hospital? A. Over a week, I don't know just how many days.

Q. And were you sick thereafter? A. I was sick in the hospital and I was sick after I got home a good many months.

Q. Were you in bed? A. Yes.

Q. How many months? A. Four or five months I stayed home.

Q. What happened then, after you had gotten out of bed at home? A. I worked around a little.

6984 Q. Have you ever gone to work since the time of the accident? A. No.

Q. And why haven't you gone to work? A. When I am working I don't feel well—nervous.

Q. When you got out of the hospital and you were in bed, as you say, in New York City, were you being treated by a doctor? A. Yes.

Q. What doctor? A. Dr. Mendel.

Q. Have you ever attempted to go to work since this accident? A. For my father, a little.

Q. Have you been able to do it? A. Not much, a half a day at a time—driving a car.

Q. Have you been able to go to work continuously? You say a half a day. Does that mean every day a half day? A. No. 6985

Q. When did you leave New York City and come to California? A. A little over a year ago.

Q. And were you treated by a doctor all the time you were in New York to the time you left for California? A. Almost.

Q. Where did you come to when you came to California? A. Came to Los Angeles.

Q. And have you lived here since? A. Yes.

Q. The same street and number? A. Not all the time, no.

Q. Have you been treated by any doctor since you have been here? A. Yes. 6986

Q. And who was the doctor? A. Dr. Houghton.

Q. And what treatments did he give you? A. Well, he examined me and looked me over and gave me stuff.

Q. By stuff do you mean medicine and pills? A. Yes.

Q. Now what do you complain of at the present time as the result of this? A. Well, my legs are weak. I got a pain right here (witness indicating abdomen).

Q. When you say here, you mean your stomach or your chest? A. Right here (witness indicates abdomen). 6987

Q. Any place else? A. My neck hurts me. I get headaches and I am very nervous—excitable.

Q. Well, when you say nervous, what do you mean? How does that show itself? A. I can't remember anything. I can't concentrate my mind on any one thing. I can't read a newspaper any length of time.

Q. Do you have dizzy spells? A. Dizzy once in a while. I get up in the middle of the night.

6988 Q. What happens when you get up in the middle of the night? A. I get up and I don't go to bed right away.

Q. Any treatments necessary for you by your father or anybody else when you get up in the middle of the night? A. Well, he doesn't know how to treat me—he doesn't know what to do.

Q. Before the time that you had this accident, what was your condition of health? A. I was in perfect health.

Q. Never had the troubles that you complain of now? A. Absolutely not. I was an athlete. I ran from Holyoke to Springfield, Massachusetts.

6989

Mr. Fainer: That is all.

Cross examination by Mr. Vermell:

Q. What were your earnings, now, before the accident? A. About $35 to $38 a week.

Q. Where were you employed just before the accident? A. I was employed in Philadelphia.

Q. What was the name of your employer? A. I can't remember—let's see—I can't think of the name.

6990 Q. How long had you been out of a job before the accident? A. Probably a couple of months.

Q. You say you were employed in Philadelphia. What did your work consist of there? A. Lumber—handling lumber.

Q. How long were you employed by this firm in Philadelphia? A. About three or four months.

Q. Where did you work before that? Just a minute—withdraw that. What was your salary in Philadelphia? A. About $35, I guess, a week.

Q. You can't give me the name of the firm in Philadelphia? A. I can't think of it.

Q. With whom were you employed before that? 6991
A. It is so long ago. A construction company, but I just can't think. Also in Philadelphia. I can't think of their name, no. I will try to think. It is a big company, too.

Q. Where were they located in Philadelphia? A. They have offices all over, you know.

Q. Can't you give us something definite? Where did you work?

Mr. Fainer: If you don't remember the name, just say so.

A. I can't remember, that's all. 6992

Q. You say you worked for the firm in Philadelphia handling lumber for about three months. A. Yes.

Q. When did you work for this construction company in Philadelphia? A. Before that.

Q. Immediately before that? A. Immediately before that. I was only out about a couple of days.

Q. How long did you work for this construction company? A. About four or five months.

Q. You can't remember where you worked? A. No. You see, I came from Massachusetts to Philadelphia. We had a farm. And I haven't lived 6993
in Philadelphia for an awful long time.

Q. You don't remember where you worked for either one of these companies? A. I will try to remember.

Mr. Fainer: If you don't remember, just say you don't remember.

The Witness: Well, I just can't think of it.

6994 Q. Who employed you before this construction company in Philadelphia? A. I didn't work for anybody.

Q. Then you were only receiving this $35 per week the time you were employed by these two companies in Philadelphia? A. $35 and $38 in one place.

Q. Which place did you receive $38? The construction company in Philadelphia? A. Yes.

Q. What were you doing before you went to work for this construction company in Philadelphia? A. I came from Massachusetts.

6995 Q. What were you doing in Massachusetts? A. On a farm there.

Q. Were you a farm hand? A. No, we had a farm, my father had a farm.

Q. You were living at home? A. Yes, working on a farm with my father.

Q. Where is that farm located? A. On the other side of Palmer, Massachusetts.

Q. What is the address of your house there on the farm? A. The address is—well, it's about three miles the other side of Palmer.

Q. Well, what is the address? A. There is no address. It is rural delivery.

6996 Q. What was the post office address? A. The post office address was Palmer.

Q. You lived three miles the other side of Palmer? A. Yes.

Q. The address is just General Delivery, Palmer? A. Yes.

Q. What wages did you receive while working as a farm hand? A. $40—$45. I wasn't a farm hand.

Q. $40 a month? A. $40 a week.

Q. Who paid you that? A. Nobody paid me that. I used to raise stuff there and market it.

Q. What do you mean by "rabe stuff"? What kind of stuff did you raise? A. I raised eighteen acres of potatoes at a time. 6997

Q. Did that land belong to you? A. Yes.

Q. Didn't belong to your father? A. Well, my father and myself—in partnership.

Q. Did your father get any proceeds from the sale of potatoes, or did you get it all? A. I used to get most of it because I did the work.

Q. What were your average earnings on the farm a year? A. Around $40 a week.

Q. What did it average a year? A. Oh, probably around $2,000 or over. Something like that. 6998

Q. How long were you on this farm? A. Quite a number of years—eight or nine years.

Q. How old are you? A. Thirty-five.

Q. You only worked for these two companies after you left the farm? They are the only two companies you worked for after you left the farm? A. Yes. I didn't work for my father, I worked for myself.

Q. You say you were treated by a Dr. Mendel after the accident? A. Yes.

Q. About how long after the accident did he treat you? A. A week or so, I guess. Something like that. 6999

Q. You went to his office about a week or so after the accident and he treated you there at the office? A. Yes.

Q. About how many times did you go to his office for treatment? A. I don't remember.

Q. Well, approximately? Three or four, five or six, fifteen or twenty? A. I don't know, I didn't count it.

Q. At least fifteen, you would say? A. Yes.

Q. Over what period of time did that cover? A. The time I was there.

7000 Q. How long were you in New York after the accident? A. Quite a few months.

Q. Where did you go from New York? A. I came out here.

Q. You came to Los Angeles? A. Yes, I came to Los Angeles.

Q. Then you were only in New York about two or three months after the accident? A. More than that.

Q. Approximately how many? A. Seven or eight. About eight months.

Q. You say Dr. Mendel treated you during the
7001 period of eight months? A. Yes.

Q. No other physician treated you at that time? A. No.

Q. In other words, Dr. Mendel was the only physician who treated you? A. In New York.

Q. Yes, in New York?

Q. Who treated you when you came to Los Angeles? A. Dr. Houghton.

Q. And how long did he treat you after you came to Los Angeles? A. Only a short while after I arrived here.

Q. Over what period of time? A. Until now.

Q. Approximately how many visits have been
7002 made to Dr. Houghton's office? A. I don't remember. He has track of them.

Q. Approximately. Twenty times? A. I don't know. Maybe more, maybe less.

Q. During all these treatments that Dr. Houghton gave to you, you went to his office? A. No, he came down to my house.

Q. What is Dr. Houghton's address? A. San Fernando.

Q. What are Dr. Houghton's initials? A. A. D.

Q. Then you never went to Dr. Houghton's office? A. No.

Q. Where did you first meet Dr. Houghton? A. 7003
I met him through somebody else. The American Legion.

Q. How soon after your coming to Los Angeles did you meet him? A. Just a short while. I don't know just how long. A couple of weeks, I guess.

Q. Were you in the war? A. Yes.

Q. Did you receive any injuries during the war? A. No.

Q. Where did you live when you were in New York? A. I lived on 95th Street. I can't remember the number. I lived a short distance from the place where I took the boat.

Q. Do you know a Mrs. Sanchez? A. I don't 7004
recall any such name.

Q. Did you ever live at 203 West 103rd Street? A. I roomed there for a little while, yes. Oh, yes, now I know.

Q. Do you remember now who she was? A. Yes.

Q. Who was she? A. It was the woman where I stayed.

Q. Did she take in boarders? A. No, just roomers.

Q. You roomed there, did you? A. Yes, for a little while.

7005

Q. Did you room there after the accident? A. Yes, a few days.

Q. About how long did you room there? A. After the accident? I was brought home to 95th Street where my people lived.

Q. You didn't live there before the accident? A. Yes, before the accident but not after the accident.

Q. After the accident you went home? A. Yes.

Q. 95th Street? A. Yes.

7006 Q. Do you remember the number? A. No, I don't remember.

Q. Who did you live there with? A. My people lived there.

Q. Father? A. Yes, my sister and father.

Q. Did you and your father own this farm in Massachusetts? A. Yes.

Q. And your father sold it, did he, and came to New York to live? A. Came to Philadelphia.

Q. This 95th Street, is that New York or Philadelphia? A. That is New York. We came from Philadelphia to New York.

7007 Q. Oh, I see. Now you said after the accident you went to the hospital and stayed there about a week, and then you went home on 95th Street? A. Yes, I went home on 95th Street.

Q. How long did you stay in bed? A. I was in bed probably about a month.

Q. Couldn't get up out of bed? A. No, I didn't get out. What I mean, I could not go outdoors. I could walk around the floor.

Q. In other words, you were bedridden for a month after you got home? A. Yes.

Q. Did Dr. Mendel go to your house to treat you? A. No, I think I rode down with a car to

7008 see him the first time that I saw him. Afterwards I walked down to his office or took the street car.

Q. How long after the accident did you do that? A. Two or three months.

Q. Then it was two or three months after the accident before you saw Dr. Mendel? A. No, I saw him before that, about a week after the accident. But I took a car down to see him.

Q. In other words, the first time you met him was down at his office? A. Yes.

Q. You took the car down first and later

walked? A. No, I took an automobile down, a taxi. Afterwards I used to take the electric. I walked from the car down to his place afterwards. 7009

Q. Did you leave the Columbia Hospital with their consent? A. No. I told them I was tired of staying there and wanted to get out.

Q. Regardless of what they said, you left? A. Well, I say, I was tired of staying there and the first doctor said I couldn't go yet, and the other doctor, the head doctor, said, "Well, let him go."

Q. In other words, then, you went against the wishes of the hospital? A. Well, one said I could and the other said I couldn't.

Q. What is the doctor's name that said you could go? A. I don't know. 7010

Q. I think you said that you were working as a longshoreman. Where were you employed as a longshoreman? A. I said I wasn't employed as a longshoreman. I was there for the purpose of getting a job as a longshoreman at that plant in Edgewater.

Q. Oh, then you never worked as a longshoreman? A. Well, taking lumber off the docks, if that is a longshoreman.

Q. Is that what your work consisted of in Philadelphia? A. Yes. 7011

Q. Do you live with your father now? A. No, I am living with my sister.

Q. At 2932 Marne Avenue? A. Yes.

Q. Where is Marne Avenue? A. Off of Adams.

Q. How far out on Adams? A. About 5500—5400 West Adams, and then you turn left.

Q. I think you said while you were on the farm in Massachusetts that you raised produce? A. Yes.

Q. Plowed and cultivated? A. Yes.

7012 Q. Did you do that the year round? A. Yes, during the months that you can do that.

Q. How many months about? A. During the summer months back East—summer, spring and fall.

Q. How many months out of the year? A. About ten months—nine months. There is work all the time on the farm. There is work in the winter, too—milking, etc.

Q. But the only revenue you received was from the sale of this produce? A. Yes, we used to raise it on a large scale. I used to work around,
7013 too, some—a day or so when I didn't have anything to do. Take a pair of horses and work on the road.

Q. Where did you work? A. At the neighbors on the other places.

Q. Oh, at your neighbor's place? How much did they pay you? A. $6, $7, $8 a day. Different prices.

Q. Do you remember any of the names of the neighbors that you used to work for? A. It has been so long since I left that I can't remember names or numbers.

Q. How many acres did you have on this farm?
7014 A. Three hundred.

Q. Did you say this farm was owned by your father? A. We owned it together.

Q. And you and your father sold out? A. Yes.

Mr. Vermell: I think that is all.

Re-direct examination by Mr. Fainer:

Q. How old were you at the time of this accident? A. Thirty-three.

Q. Do you owe any money to Dr. Mendel? A. 7015
I haven't paid him.

Q. Do you owe him anything? A. Yes.

Q. Do you know how much? A. No.

Q. Has Dr. Houghton rendered you a bill? A. No, he has not, not yet.

Q. Have you paid him anything yet? A. No.

Q. I want to ask you one question about your work. You say that you have worked a half a day sometimes for your father and then you would have to stop working. What was the reason for your stopping working? A. Sick—weak.

Q. How would that manifest itself—how would 7016
it show itself? A. Couldn't raise my legs—weakness.

Q. Is that all there was to it? A. Couldn't raise my arms. Weakness all over.

Q. You couldn't raise your arms and your legs? A. Yes, and my neck hurt when I would bend down.

Mr. Fainer: That is all.

Re-cross examination by Mr. Vermell:

Q. Can you walk all right now? A. I can walk 7017
a little. I got here.

Q. Did you walk down here? A. No, I came in the car.

Q. Street car? A. Yes, the street car.

Q. Can you use your arms all right now? A. Well, I use them better than I did right after the accident, but still I can't use them like I should.

Q. Do you walk all right now? A. I walk a little, yes, but I can't do any hard work. As soon as I do the slightest exertion I am all in.

7018 Q. How far did you walk yesterday? A. I don't know how far I walked. I came down here.

Q. Did you walk down to the doctor's office yesterday? A. I took the car down and I walked from the car to the doctor's office.

Mr. Vermell: I guess that's all.

Mr. Fainer: All right.

State of California,
County of Los Angeles—ss.:

7019 I, HERBERT V. COFFEY, a Notary Public in and for the County of Los Angeles, State of California, do hereby certify that the witness in the foregoing deposition named was by me duly sworn to testify the truth, the whole truth and nothing but the truth; that said deposition was taken at the time and place hereinbefore mentioned, to wit: Suite 400, Law Building, 139 North Broadway, in the City of Los Angeles, State of California, on the 24th day of October, 1928; that said deposition was taken down in shorthand by Estelle Kirschner, a stenographer, and thereafter transcribed, and when completed an opportunity was given the
7020 witness to read the same and thereafter being by him pronounced correct was by him subscribed in my presence.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal of office this day of , 1928.

.....
Notary Public in and for the
County of Los Angeles,
State of California.

U. S. DEPARTMENT OF AGRICULTURE, WEATHER BUREAU.

Monthly Meteorological Summary

WITH COMPARATIVE DATA

NEW YORK, N. Y. MONTH OF DECEMBER, 1926.

DATE	TEMPERATURE (Degrees Fahrenheit)				Relative Humidity (Percent)			PRECIPITATION (Inches)				WIND (Miles per hour)			SUNSHINE				Cloudiness (Sunrise to Sunset; Sky = 10)
	Maximum	Minimum	Mean	Departure from Normal	8 a. m.	13 noon	8 p. m.	Total (Midnight to Midnight)	Total (8 a. m. to 8 a. m.)	Snowfall (Midnight to Midnight)	Depth on Ground at 8 a. m.	Average Velocity	Prevailing Direction	Maximum Velocity and Direction	Record, Time and Character	Number, Time and Character	Number of Hours	Percentage of Possible	
W 1	44	32	38	− 1	82	75	65	T	0	0	0	21.2	w	50— nw	7:02	4:28	2.7	29	8
T 2	32	17	24	−14	64	46	38	0	0	0	0	40.6	nw	66— nw	7:03	4:28	9.4	100	1
F 3	33	15	24	−14	46	49	90	.07	T	0.5	0.5	13.5	sw	29— sw	7:04	4:28	5.5	59	7
S 4	39	11	25	−13	72	62	30	0	0	0	0.2	23.5	nw	46— nw	7:05	4:28	3.4	36	7
S 5	27	11	19	−19	73	87	87	.73	.56	a7.0	6.7	18.2	ne	34— ne	7:06	4:28	0	0	10
M 6	23	13	18	−19	59	56	53	0	0	0	5.8	33.6	nw	54— nw	7:07	4:28	9.4	100	1
T 7	30	N	20	−17	72	52	52	.01	0	b0.1	5.3	13.7	n-sw	26— sw	7:08	4:28	7.6	82	4
W 8	40	27	34	− 3	61	64	70	T	T	0	4.9	22.1	sw	33— nw	7:08	4:28	1.2	13	10
T 9	34	25	30	− 6	80	52	63	.05	0	0.5	4.3	10.0	n	25— n	7:09	4:28	6.5	70	6
F 10	37	31	34	− 2	91	95	79	.05	.01	0.1	4.0	12.7	nw	25— nw	7:10	4:28	3.8	41	7
S 11	37	29	33	− 3	71	94	81	.06	.05	b0.5	3.5	11.1	w	27— w	7:11	4:28	1.9	20	8
S 12	42	29	36	0	57	50	64	0	0	0	2.8	14.1	nw	35— nw	7:12	4:28	9.3	100	4
M 13	46	37	42	+ 7	98	98	93	.02	.01	0	1.6	6.9	e	14— s	7:12	4:28	0	0	10
T 14	50	31	40	+ 5	100	61	49	T	0	0	0	16.9	nw	29— nw	7:13	4:28	7.0	76	4
W 15	31	24	28	− 7	60	64	88	.03	.02	0.4	0.3	11.7	n - nw	22— nw	7:14	4:29	0	0	10
T 16	27	16	22	−13	70	46	42	0	0	0	0.1	23.6	nw	38— nw	7:15	4:29	9.2	100	0
F 17	32	11	22	−13	60	55	53	T	0	T	T	24.2	w	50— nw	7:16	4:29	2.3	25	9
S 18	20	7	14	−20	51	31	37	0	0	0	0	28.5	nw	50— nw	7:16	4:30	9.2	100	0
S 19	25	9	17	−17	55	46	54	0	0	0	0	15.0	nw	27— nw	7:17	4:30	9.2	100	2
M 20	34	18	26	− 8	69	56	59	.02	.01	0.2	T	11.5	sw	22— sw	7:17	4:30	0	0	10
T 21	46	32	39	+ 5	77	57	58	T	0	0	0	13.5	nw	26— nw	7:18	4:31	5.8	63	10
W 22	40	27	34	0	67	52	61	0	0	0	0	15.9	n	25— n	7:18	4:31	6.2	67	7
T 23	34	21	28	− 5	74	56	65	0	0	0	0	10.2	n	22— ne	7:19	4:32	9.2	100	0
F 24	39	27	33	0	71	75	87	.05	.02	0	0	11.9	sw	23— w	7:19	4:33	1.4	15	10
S 25	43	33	38	+ 5	80	59	68	.13	0	a0.1	T	15.5	nw	28— nw	7:20	4:33	6.3	68	9
S 26	33	21	27	− 6	89	81	62	.95	.10	c0.8	0.5	12.2	nw	42— n	7:20	4:34	6.9	75	7
M 27	34	19	26	− 7	71	64	78	0	0	0	0.1	10.0	nw	26— nw	7:20	4:34	8.3	90	3
T 28	46	31	38	+ 5	100	94	100	1.47	1.31	0.1	0	9.2	ne	24— s	7:21	4:35	0	0	10
W 29	42	30	36	+ 4	74	59	60	T	0	0	0	23.6	nw	45 - nw	7:21	4:36	9.2	100	4
T 30	36	24	30	− 2	70	47	57	0	0	0	0	20.2	nw	31— nw	7:21	4:37	8.0	86	4
F 31	41	25	33	+ 1	66	57	66	.08	0	0.3	T	9.0	s	22— w	7:21	4:37	6.8	73	7
Month	Mean 36.0	Mean 22.4	Mean 29.2	Blank	M'n 72	M'n 63	M'n 65	Total 3.72	Total 2.10	Total d10.6	Blank	Mean 17.3	Prev'l'g nw	Blank	Blank	Blank	Total 165.7	58	Mean 6.1
Normal	41.2	28.8	35.0	Blank	74	62	68	3.45	Blank	6.2	Blank	19.0	nw	Blank	Blank	Blank	Possible 287.3	51	6.0

ATMOSPHERIC PRESSURE.

(Reduced to sea-level; inches.)

Mean 30.10
Highest ..... 30.60 on the 5th
Lowest ..... 29.55 on the 11th
Highest recorded for this month since 1892 ..... 30.88 on the 20th in 1896
Lowest recorded for this month since 1892 ..... 28.98 on the 20th in 1920

TEMPERATURE.

Highest ..... 50 on the 14th
Lowest ..... 7 on the 18th
Greatest daily range ..... 28 on the 4th

WIND.

Total movement 12,880
Maximum velocity ..... 66-nw on the 2d
Direction from (percent.)

North	14	Southeast	2	West	14
Northeast	8	South	5	Northwest	41
East	4	Southwest	12	Calm	0

Maximum velocity recorded for this month since 1871 ..... 80-nw on the 20th, 1915

WEATHER.

(Number of Days)

Clear (scale 0 to 3) 7
Partly cloudy (scale 4 to 7) 12
Cloudy (scale 8 to 10) 12

PRECIPITATION.

Greatest this month in 24 hours ..... 1.47 on the 28th
Greatest in 24 hours for this month since 1871 ..... 2.93 on the 13-14th in 1920

Greatest this month in

5 min.	.04 on 20th	60 min.	.13 on 28th
10 min.	.07 on 28th	1 hour	.22 on 28th
15 min.	.09 on 28th	2 hours	.28 on 28th

Excess of this month as compared with the normal 0.27

M 6	23	13	18	−19	59	56	53	0	0	0	5.8	33.6	nw	54— nw	7:07	4:28	0	0	10
T 7	30	11	20	−17	72	52	52	.01	0	b0.1	5.3	13.7	n-sw	26— sw	7:06	4:28	9.4	100	1
W 8	40	27	34	− 3	61	84	70	T	T	0	4.9	22.1	sw	33— nw	7:05	4:28	7.6	82	4
T 9	34	25	30	− 6	80	52	63	.05	0	0.5	4.3	10.0	n	25— n	7:04	4:28	1.2	13	10
F 10	37	31	34	− 2	91	85	79	.05	.01	0.1	4.0	12.7	nw	25— nw	7:10	4:28	6.5	70	6
S 11	37	29	33	− 3	71	94	81	.06	.06	b0.5	3.5	11.1	w	27— w	7:11	4:28	3.8	41	7
S 12	42	29	36	0	57	50	64	0	0	0	2.8	14.1	nw	35— nw	7:12	4:28	1.9	20	8
M 13	46	37	42	+ 7	98	98	93	.02	.01	0	1.6	6.9	e	14— s	7:12	4:28	9.3	100	4
T 14	50	31	40	+ 5	100	61	49	T	0	0	0	16.9	nw	29— nw	7:13	4:28	0	0	10
W 15	31	24	28	− 7	60	84	88	.03	.02	0.4	0.3	11.7	n-nw	22— nw	7:14	4:29	7.0	76	4
T 16	27	16	22	−13	70	46	42	0	0	0	0.1	23.6	nw	38— nw	7:15	4:29	0	0	10
F 17	32	11	22	−13	60	55	53	T	0	T	T	24.2	w	50— nw	7:16	4:29	9.2	100	0
S 18	20	7	14	−20	51	31	37	0	0	0	0	28.5	nw	50— nw	7:16	4:30	2.3	25	9
S 19	25	9	17	−17	55	46	54	0	0	0	0	15.0	nw	27— nw	7:17	4:30	9.2	100	0
M 20	34	18	26	− 8	69	56	59	.02	.01	0.2	T	11.5	sw	22— sw	7:17	4:30	9.2	100	2
T 21	46	32	39	+ 5	77	57	58	T	0	0	0	13.5	nw	26— nw	7:18	4:31	0	0	10
W 22	40	27	34	0	67	52	61	0	0	0	0	15.9	n	25— n	7:18	4:31	5.8	63	10
T 23	34	21	28	− 5	74	56	65	0	0	0	0	10.2	n	22— ne	7:19	4:32	6.2	67	7
F 24	39	27	33	0	71	75	87	.05	.02	0	0	11.9	sw	23— w	7:19	4:33	9.2	100	0
S 25	43	33	38	+ 5	80	59	68	.13	0	a0.1	T	15.5	nw	28— nw	7:20	4:33	1.4	15	10
S 26	33	21	27	− 6	89	81	62	.95	.10	c0.8	0.5	12.2	nw	42— n	7:20	4:34	6.3	66	9
M 27	34	19	26	− 7	71	64	78	0	0	0	0.1	10.0	nw	26— nw	7:20	4:34	6.9	75	7
T 28	46	31	38	+ 5	100	94	100	1.47	1.31	0.1	0	9.2	ne	24— s	7:21	4:35	8.3	90	3
W 29	42	30	36	+ 4	74	59	60	T	0	0	0	23.6	nw	45— nw	7:21	4:36	0	0	10
T 30	36	24	30	− 2	70	47	57	0	0	0	0	20.2	nw	31— nw	7:21	4:37	9.2	100	4
F 31	41	25	33	+ 1	66	57	66	.08	0	0.3	T	9.0	s	22— w	7:21	4:37	8.0	86	4
																	6.8	73	7
Month	Mean 36.0	Mean 22.4	Mean 29.2	Blank	M'n 72	M'n 63	M'n 65	Total 3.72	Total 2.10	Total d10.6	Blank	Mean 17.3	Prev'l'g nw	Blank	Blank	Blank	Total 165.7	58	Mean 6.1
Normal	41.2	28.8	35.0	Blank	74	62	68	3.45	Blank	6.2	Blank	19.0	nw	Blank	Blank	Blank	Possible 287.3	51	6.0

ATMOSPHERIC PRESSURE.

(Reduced to sea-level; inches.)

Mean..... 30.10
Highest..... 30.60 on the 5th
Lowest..... 29.55 on the 11th
Highest recorded for this month since 1892 ..... 30.88 on the 20th in 1902
Lowest recorded for this month since 1892 ..... 28.96 on the 29th in 1899

TEMPERATURE.

Highest..... 50 on the 14th
Lowest..... 7 on the 18th
Greatest daily range..... 28 on the 4th
Least daily range..... 6 on the 10th
Average daily deficiency of this month as ..... compared with the normal 5.8
Accumulated deficiency .... since January 1st..708
Average daily deficiency ....since January 1st..1.9

Mean, Maximum and Minimum Temperatures For This Month

1871	30	55	-1	1891	42	66	14	1911	39	60	18
1872	27	47	3	1892	31	59	9	1912	38	55	17
1873	38	64	14	1893	35	68	13	1913	39	58	19
1874	34	60	6	1894	37	67	7	1914	32	61	4
1875	33	61	2	1895	37	56	13	1915	34	55	17
1876	26	49	-2	1896	32	55	5	1916	34	62	15
1877	39	61	22	1897	36	60	9	1917	25	46	-13
1878	32	58	12	1898	34	57	12	1918	39	61	21
1879	37	62	11	1899	36	60	8	1919	30	60	0
1880	29	59	-6	1900	35	56	12	1920	34	59	18
1881	41	68	22	1901	34	59	13	1921	34	58	4
1882	38	67	11	1902	32	54	6	1922	34	56	13
1883	34	64	4	1903	30	52	7	1923	42	64	24
1884	36	63	1	1904	36	62	9	1924	34	61	11
1885	33	61	14	1905	36	67	13	1925	34	57	7
1886	33	62	14	1906	35	67	8	1926	30	59	7
1887	32	60	12	1907	35	64	10	.....	..	..	..
1888	34	62	9	1908	35	64	10	.....	..	..	..
1889	36	66	16	1909	33	64	6	.....	..	..	..
1890	36	66	15	1910	35	66	9	.....	..	..	..

WIND.

Total movement..... 12,880
Maximum velocity..... 68-nw on the 2d
Direction from (percent.)

North	14	Southeast	2	West	14
Northeast	8	South	5	Northwest	41
East	4	Southwest	12	Calm	0

Maximum velocity recorded for this month since 1871 ..... 50-nw on the 20th, 1915

WEATHER.

(Number of Days)

Clear (scale 0 to 3)..... 7
Partly cloudy (scale 4 to 7)..... 12
Cloudy (scale 8 to 10)..... 12
With 0.01 in. or more of precipitation.. 14
With 0.25 in. or more of precipitation.. 3

Average number of days for this month since 1871
Clear 8
Partly cloudy 11
Cloudy 12
With .01 in. or more of precipitation 11
With .25 in. or more of precipitation 4

MISCELLANEOUS PHENOMENA.

[Dates of]

Halos: Solar..... 9th, 31st
Halos: Lunar..... 12th, 19th
Haze..... None
Sleet..... 5th, 7th, 11th, 25th, 26th
Dense fog..... 10th, 11th, 13th, 14th, 28th
Thunderstorms..... None
Frosts: (Not recorded before April 1 nor after the first killing in Autumn.)

Spring 1926 — Last Killing..... April 16; Last Heavy..... April 14; Last Light..... May 18
Autumn 1926 — First Light..... October 8; First Heavy..... October 15; First Killing..... October 27

Average date last killing frost, spring, April 16th
Latest date killing frost, spring, April 22, 1875
Average date first killing frost, autumn, Nov. 6th
Earliest date first killing frost, autumn, Oct. 15, 1876

PRECIPITATION.

Greatest this month in 24 hours ..... 1.47 on the 28th

Greatest in 24 hours for this month since 1871..... 2.08 on the 13-14th in 1909

Greatest this month in

5 min.	.04 on 28th	30 min.	.13 on 28th
10 min.	.07 on 28th	1 hour	.22 on 28th
15 min.	.09 on 28th	2 hours	.29 on 28th

Excess of this month as compared with the normal 0.27
Accumulated excess since January 1st 5.05
Greatest snowfall in 24 hours ..... 7.0 on the 5th

Greatest snowfall in 24 hours for this month since 1885..... 14.0 on the 26-27th in 1890

Total Precipitation for This Month

1871	1.24	1891	3.30	1911	3.39
1872	2.54	1892	1.64	1912	4.24
1873	2.06	1893	3.49	1913	2.49
1874	1.89	1894	5.28	1914	4.01
1875	2.78	1895	1.57	1915	4.28
1876	2.29	1896	1.70	1916	2.97
1877	0.95	1897	4.88	1917	3.70
1878	4.98	1898	2.93	1918	3.70
1879	5.86	1899	1.57	1919	2.88
1880	4.15	1900	1.96	1920	3.69
1881	4.57	1901	6.05	1921	1.89
1882	2.22	1902	3.19	1922	3.59
1883	3.40	1903	2.81	1923	2.78
1884	6.66	1904	3.57	1924	2.38
1885	2.89	1905	3.67	1925	3.28
1886	3.73	1906	3.89	1926	3.72
1887	4.20	1907	3.91	....	....
1888	4.69	1908	3.71	....	....
1889	1.81	1909	5.70	....	....
1890	3.48	1910	1.96	....	....

NOTE—"T" (Trace) Weather, less than .01 inch. • Clear in light, cloudy in bold-face type. † Including sleet.
snow, less than 0.1 inch. a Includes 0.1 inch of sleet. b Includes trace of sleet. c Includes 0.4 inch of sleet. d Includes 0.6 inch of sleet.

(Temperature, precipitation and wind in detail OVER)

James H. Scarr, *Meteorologist, Weather Bureau.*

Claimants' Exhibit E.

7021

Weather Report, December, 1926.

(PHOTOPRINT.)

7022

7023

7024

Claimants' Exhibit F.

Weather Report, November, 1926.

(PHOTOPRINT.)

7025

7026

Claimant's Exhibit F

Form No. 1030—Met'l.

U. S. DEPARTMENT OF AGRICULTURE, WEATHER BUREAU.

Monthly Meteorological Summary

WITH COMPARATIVE DATA.

NEW YORK, N. Y. MONTH OF NOVEMBER, 1926.

DATE	TEMPERATURE. (Degrees Fahrenheit.) Maximum	Minimum	Mean	Departure of Mean from Normal	Relative Humidity. (Percent) 8 a. m.	1p Noon	8 p. m.	PRECIPITATION. (Inches.) Total (Midnight to midnight.)	Total (7a. m. to 8 p. m.)	Snowfall (Midnight to midnight.) †	Depth of Snow on Ground at 8 p. m. †	WIND. (Miles per hour) Average Velocity	Prevailing Direction.	Maximum Velocity and Direction.	SUNSHINE. Sunrise.* Time and Character.	Sunset.* Time and Character.	Number of Hours.	Percent of Possible.	CLOUDINESS. (Sunrise to Sunset Scale, 0 to 10.)
M 1	51	37	44	— 6	66	48	64	0	0	0	0	11.0	n	21— nw	6:27	4:52	10.4	100	0
T 2	50	40	45	— 4	82	51	67	.02	.02	0	0	19.1	nw	42— nw	6:28	4:51	5.7	55	7
W 3	49	36	42	— 7	75	51	65	0	0	0	0	17.8	nw	26— n	6:30	4:50	10.3	100	4
T 4	46	32	39	—10	65	47	54	0	0	0	0	13.9	nw	22— nw	6:31	4:49	9.9	96	3
F 5	50	39	44	— 4	84	50	63	0	0	0	0	26.3	w	52— nw	6:32	4:47	6.7	66	8
S 6	55	36	46	— 2	75	59	61	0	0	0	0	14.8	ssww	31— s	6:33	4:46	10.2	100	0
S 7	59	45	52	+ 5	81	69	76	.07	0	0	0	7.0	s	13 s	6:34	4:45	6.6	65	5
M 8	62	52	57	+10	82	34	68	0	0	0	0	12.5	e	24 se	6:36	4:44	6.1	60	4
T 9	65	51	58	+11	98	94	98	.92	.63	0	0	29.1	s	50— sw	6:37	4:43	0	0	10
W 10	62	32	47	+ 1	65	58	45	.22	0	0	0	33.5	nw	64 nw	6:38	4:42	6.2	61	5
T 11	37	27	32	—14	54	38	41	0	0	0	0	26.2	nw	42 nw	6:39	4:41	9.3	93	3
F 12	40	26	33	—12	53	40	45	0	0	0	0	12.5	nw	21 w	6:40	4:40	10.0	100	0
S 13	50	33	42	3	62	50	66	0	0	0	0	10.8	sw	16— s	6:41	4:40	8.2	82	7
S 14	56	46	51	+ 6	80	65	88	T	T	0	0	12.0	se	21— se	6:43	4:39	4.6	46	8
M 15	61	53	57	+13	88	74	82	0	0	0	0	26.5	s	44 s	6:44	4:38	5.6	57	7
T 16	62	47	54	+10	84	94	96	.51	.45	0	0	42.7	s	70 s	6:45	4:37	0	0	10
W 17	55	42	48	+ 5	59	55	50	0	0	0	0	14.8	w	29— w	6:46	4:36	9.8	100	0
T 18	53	46	50	+ 7	76	79	87	.30	.01	0	0	13.9	e	30 ne	6:47	4:35	0.7	7	9
F 19	53	35	44	+ 1	86	60	58	.20	0	0	0	20.7	nw	33— nw	6:48	4:35	5.8	59	8
S 20	42	32	37	— 5	65	62	58	0	0	0	0	23.5	w	34 nw	6:50	4:34	5.7	59	9
S 21	39	34	36	— 6	55	62	60	T	T	T	0	21.0	w	28 w	6:51	4:33	0	0	9
M 22	41	28	34	— 8	72	49	54	0	0	0	0	18.7	w	30 w	6:52	4:33	9.7	100	1
T 23	45	33	39	— 2	71	55	63	0	0	0	0	12.3	w	22— w	6:53	4:32	3.5	36	7
W 24	49	36	42	+ 1	67	62	67	0	0	0	0	22.5	s	39 nw	6:54	4:31	5.8	60	6
T 25	43	32	38	— 3	52	40	69	0	0	0	0	12.6	s	21 nw	6:56	4:31	8.7	91	5
F 26	56	43	50	+10	86	94	100	.47	.02	0	0	19.8	s	42 s	6:57	4:30	0	0	10
S 27	54	26	40	0	58	54	55	0	0	0	0	37.5	nw	64 nw	6:58	4:30	5.1	54	6
S 28	38	23	30	—10	57	47	65	0	0	0	0	14.2	nw	31— nw	6:59	4:30	8.0	84	5
M 29	51	35	43	+ 4	83	64	76	T	0	0	0	14.0	sw	30 sw	7:00	4:29	3.7	39	10
T 30	52	40	46	+ 7	86	89	84	.41	.12	0	0	15.5	n	27— n	7:01	4:29	1.9	20	10
.....	....	....	....	....	....	....	....	.....	.....	.....	.....	....	.....	.....	....	....	....	....	....
Month	Mean 50.9	Mean 37.2	Mean 44.0	Blank	M'n 72	M'n 59	M'n 68	Total 3.12	Total 1.25	Total T	Blank	Mean 19.2	Prev'l'g nw	Blank	Blank	Blank	Total 178.2	60	Mean 5.9
Normal	51.0	37.3	44.2	Blank	74	59	68	3.44	Blank	0.9	Blank	18.9	nw	Blank	Blank	Blank	Possible 297.0	55	5.7

ATMOSPHERIC PRESSURE. | WIND | PRECIPITATION

Claimant's Exhibit F.

S 7	59	45	52	+ 5	81	69	76	.07	0	0	0	7.0	s	13 s	6:34	4:45	6.6	65	5
M 8	62	52	57	+10	82	34	68	0	0	0	0	12.5	e	24 se	8:36	4:44	6.1	60	4
T 9	65	51	58	+11	98	94	98	.92	.63	0	0	29.1	s	50— sw	6:37	4:43	0	0	10
W 10	62	32	47	+ 1	65	58	45	.22	0	0	0	33.5	nw	64 nw	6:38	4:42	6.2	61	5
T 11	37	27	32	−14	54	38	41	0	0	0	0	26.2	nw	42 – nw	6:39	4:41	9.3	93	3
F 12	40	26	33	−12	53	40	45	0	0	0	0	12.5	nw	21 w	6:40	4:40	10.0	100	0
S 13	59	33	42	− 3	62	50	66	0	0	0	0	10.8	sw	16— s	6:41	4:40	8.2	82	7
S 14	56	46	51	+ 6	80	65	88	T	T	0	0	12.0	se	21— se	6:43	4:39	4.6	46	8
M 15	61	53	57	+13	88	74	82	0	0	0	0	26.5	s	44 s	6:44	4:38	5.6	57	7
T 16	62	47	54	+10	84	94	96	.51	.45	0	0	42.7	s	70 s	6:45	4:37	0	0	10
W 17	55	42	48	+ 5	59	45	50	0	0	0	0	14.8	w	29— w	6:46	4:36	9.8	100	0
T 18	53	46	50	+ 7	76	79	87	.30	.01	0	0	13.9	e	30 ne	6:47	4:35	0.7	7	9
F 19	53	35	44	+ 1	86	60	58	.20	0	0	0	20.7	nw	33— nw	6:48	4:35	5.8	59	8
S 20	42	32	37	− 5	65	65	58	0	0	0	0	23.5	w	34 nw	6:50	4:34	5.7	59	9
S 21	39	34	36	− 6	55	62	60	T	T	T	0	21.0	w	28 w	6:51	4:33	.0	0	9
M 22	41	28	34	− 8	72	49	54	0	0	0	0	18.7	w	30 w	6:52	4:33	9.7	100	1
T 23	45	33	39	− 2	71	55	63	0	0	0	0	12.3	w	22— w	6:53	4:32	3.5	36	7
W 24	49	36	42	+ 1	67	62	67	0	0	0	0	22.5	s	39 nw	6:54	4:31	5.8	60	6
T 25	43	32	38	− 3	52	40	69	0	0	0	0	12.6	s	21 nw	6:56	4:31	8.7	91	5
F 26	56	43	50	+10	86	94	100	.47	.02	0	0	19.8	s	42 s	6:57	4:30	0	0	10
S 27	54	26	40	0	58	54	55	0	0	0	0	37.5	nw	64 nw	6:58	4:30	5.1	54	6
S 28	38	23	30	−10	57	47	65	0	0	0	0	14.2	nw	31— nw	6:59	4:30	8.0	84	5
M 29	51	35	43	+ 4	83	64	76	T	0	0	0	14.0	sw	30 sw	7:00	4:29	3.7	39	10
T 30	52	40	46	+ 7	86	89	84	.41	.12	0	0	15.5	n	27— n	7:01	4:29	1.9	20	10
.....	....	....	....	....	....	....	....	.....	.....	.....	.....	....	.....	.....	....	....	....	....	....
Month	Mean 50.9	Mean 37.2	Mean 44.0	Blank ...	M'n 72	M'n 59	M'n 68	Total 3.12	Total 1.25	Total T	Blank	Mean 19.2	Prev'l'g nw	Blank	Blank	Blank	Total 178.2	60	Mean 5.9
Normal	51.0	37.3	44.2	Blank	74	59	68	3.44	Blank	0.9	Blank	18.9	nw	Blank	Blank	Blank	Possible 297.0	55	5.7

ATMOSPHERIC PRESSURE.

(Reduced to sea-level; inches.)

Mean 30.12
Highest ..... 30.58 on the 12th
Lowest ..... 29.31 on the 16th
Highest recorded for this month since 1882 ..... 30.80 on the 19th in 1891
Lowest recorded for this month since 1882 ..... 28.70 on the 18th in 1904

TEMPERATURE.

Highest ..... 65 on the 9th
Lowest ..... 23 on the 28th
Greatest daily range ..... 30 on the 10th
Least daily range ..... 5 on the 21st
Average daily deficiency of this month as compared with the normal 0.2
Accumulated deficiency since January 1st..53†
Average daily deficiency since January 1st..1.6

MEAN, MAXIMUM AND MINIMUM TEMPERATURES FOR THIS MONTH

1871	39	60	18	1891	44	64	10	1911	41	68	24
1872	40	62	11	1892	43	66	24	1912	47	71	27
1873	37	58	20	1893	44	62	26	1913	47	70	28
1874	43	68	23	1894	42	69	21	1914	44	78	22
1875	39	60	7	1895	46	72	24	1915	45	68	30
1876	44	73	21	1896	48	70	27	1916	45	69	25
1877	46	70	26	1897	41	66	21	1917	41	63	18
1878	44	59	28	1898	45	63	25	1918	46	65	27
1879	43	73	17	1899	45	62	29	1919	44	70	26
1880	40	67	14	1900	49	72	28	1920	44	67	25
1881	46	68	24	1901	40	60	17	1921	45	71	30
1882	42	74	25	1902	50	68	32	1922	45	65	27
1883	45	68	8	1903	41	70	17	1923	45	65	29
1884	43	63	21	1904	41	60	21	1924	44	68	18
1885	45	69	26	1905	44	63	19	1925	44	66	24
1886	45	73	29	1906	45	64	27	1926	44	65	23
1887	44	67	25	1907	45	60	33	....	..	..	..
1888	47	72	18	1908	45	62	27	....	..	..	..
1889	47	65	27	1909	48	74	30	....	..	..	..
1890	46	71	18	1910	42	65	29	....	..	..	..

WIND.

Total movement 13,843
Maximum velocity ..... 70-s on the 10th
Direction from (percent.)

North	5	Southeast	7	West	20
Northeast	2	South	18	Northwest	25
East	8	Southwest	15	Calm	0

Maximum velocity recorded for this month since 1871 ..... 77-nw on the 16th, 1924

WEATHER.

Number of Days

Clear (scale 0 to 3) 7
Partly cloudy (scale 4 to 7) 12
Cloudy (scale 8 to 10) 11
With 0.01 in. or more of precipitation 9
With 0.25 in. or more of precipitation 5

Average number of days for this month since 1871

Clear	9
Partly cloudy	10
Cloudy	11
With .01 in. or more of precipitation	9
With .25 in. or more of precipitation	4

MISCELLANEOUS PHENOMENA.

[Dates of]

Halos: Solar 13th, 29th, 30th
Halos: Lunar 22d
Haze 1st
Sleet ..... None
Dense fog 9th, 26th
Thunderstorms 9th, 18th, 26th
Frosts: (Not recorded before April 1 nor after the first killing in Autumn.)

SPRING: 1926	Last Killing	April 16
	Last Heavy	April 14
	Last Light	May 15
AUTUMN 1926	First Light	October 8
	First Heavy	October 15
	First Killing	October 27

Average date last killing frost, spring, April 16th
Latest date killing frost, spring, April 30, 1875
Average date first killing frost, autumn, Nov. 6th
Earliest date first killing frost, autumn, Oct. 15, 1876

PRECIPITATION.

Greatest this month in 24 hours ..... 1.14 on the 9-10th
Greatest in 24 hours for this month since 1871 ..... 3.62 on the 15-16th in 1892

Greatest this month in

5 min.	.12 on 9th	30 min.	.86 on 9th
10 min.	.21 on 9th	1 hour	.44 on 9th
15 min.	.28 on 9th	2 hours	.47 on 9th

Deficiency of this month as compared with the normal 0.32
Accumulated excess since January 1st 4.78
Greatest snowfall in 24 hours ..... Trace on the 21st
Greatest snowfall in 24 hours for this month since 1885 ..... 5.8 on the 26-27th in 1896

TOTAL PRECIPITATION FOR THIS MONTH

1871	4.33	1891	2.06	1911	4.22
1872	5.04	1892	8.28	1912	2.21
1873	4.01	1893	3.71	1913	1.91
1874	2.21	1894	3.83	1914	2.08
1875	4.43	1895	3.58	1915	1.09
1876	4.40	1896	2.12	1916	1.57
1877	5.48	1897	4.44	1917	0.68
1878	3.74	1898	5.90	1918	2.04
1879	2.22	1899	2.13	1919	3.83
1880	2.40	1900	4.28	1920	3.86
1881	2.87	1901	1.31	1921	3.48
1882	1.80	1902	1.19	1922	1.16
1883	1.65	1903	0.90	1923	2.26
1884	3.44	1904	2.62	1924	2.04
1885	5.06	1905	1.67	1925	2.86
1886	4.61	1906	1.28	1926	3.12
1887	2.04	1907	5.06	....	....
1888	4.81	1908	0.75	....	....
1889	9.62	1909	1.56	....	....
1890	0.82	1910	4.62	....	....

* Clear by night, cloudy in bold-face type. † Intermittent flood.

Claimants' Exhibit H.

7027

SPENCER KELLOGG AND SONS, INC.
Buffalo, N. Y.

Voucher No.
Date Feb. 11, 1925

Bought to Floyd Clayton
City and State New Jersey
Street and No. Woodclif on Hud on

Terms: Net Cash

Beaching Motor boat for winter at boat house	$50.00	7028
Your Reg. #10902		
" Purchase No. 13835		

(Received
Mar 13 1925
Purchasing Dept.

Claimants' Exhibit N.

"LABORERS—Spencer Kellogg & Sons, Edgewater, N. J., take company boat W. 93 St. Apply Saturday 10:30, 11:30 A. M. for day shift; 3:30, 5:15 P. M. for night shift; 48 cents per hour." 7029

Claimants' Exhibit JJJ.

7030 STATEMENT OF FRED CHARLES LANG EMPLOYED AS NIGHT OPERATOR OF THE MOTOR LAUNCH "LINSEED KING".

I assisted Marty Dinkel, who was formerly operator of the "Linseed King", for over a year before I became operator on that boat. I obtained my license as operator about six months ago. My usual hours were from six P. M. to six A. M. but during rush periods of loading ships I assisted the day operator on the 6:30 trip in the morning as that was the trip on which we usually had the largest number of passengers. I made the day
7031 trips on Sunday as well as my usual night trips.

I did not assist the day operator of the "Linseed King" on his trip on Monday, December 20th, when the "Linseed King" was damaged by ice and sunk with loss of life and property. The reason I did not make this trip was that Captain Rohweder arrived at the plant earlier than his usual hour and left the plant at 6:10 A. M. in order to make one trip before the regular 6:30 trip. We expected to make two trips that morning instead of one, for the reason that we were expecting a larger crowd than usual, and Captain Rohweder left for the first of these two trips
7032 about 6:05 or 6:10; I do not know exactly.

I made the morning trips on Sunday, December 20th, the day before the accident. I made the first trip at 7:20 and the next trip at nine o'clock, or a little after. I carried from fifty to sixty men on each of these trips. On these trips the tide was flood and floating ice in the river was fully two inches thick, but this ice caused me no difficulty at all. We ordinarily ran the boat at about six to seven miles, which was half speed for the "Linseed King". She could make ten miles an hour or slightly better.

Claimants' Exhibit JJJ.

The capacity of the "Linseed King" was slightly more than ten tons and from fifty to sixty men could be seated on the fore and aft seats which ran the full length of the cabin on either side. 7033

The "Linseed King" was practically an open boat with a prominent wooden canopy of light material. The part of the boat covered by this canopy is what I referred to as the cabin. This wooden canopy had about nine glass windows to each side, two doors forward, one on either side of the pilot house, and hatch in the stern, so that there were three places for entering and leaving the boat.

I do not consider that the boat would be overloaded with ninety men aboard. The passengers would be somewhat crowded and about thirty would have to stand up but the crowd would be nothing as compared to standing crowds on ferry boats or in the subway. 7034

The boat was very strongly constructed, of one and one-half inch planking and heavy oak frames about two and one-half by three inches. She was very staunch, strong and tight and certainly had no leaks of any sort on Sunday, December 19th, when I made my trips and when I left her after completing my Sunday's work. 7035

FRED C. LANG.

Sworn to before me this
22nd day of December, 1926.

EDWARD A. QUINLAN,
Notary Public,
Kings County No. 2.
Kings County Register's No. 8002.
New York Co. Clk's No. 6, Reg. No. 8007.
Queens County Clerk's No. 149.
Commission expires March 30, 1928.

Claimants' Exhibit MMM.

7036

Borough of Edgewater
County of Bergen
State of New Jersey

I, MARTIN DINKLE resides at Guttenberg, New Jersey was employed for several years by Spencer Kellogg & Sons Inc., at Edgewater, New Jersey, as Captain of the "Linseed King". All the time during which I operated this boat, it was kept in a seaworthy condition, and when I left the company in the fall of 1926, it was not on account
7037 of anything wrong with the boat, and any statement contrary to this is untrue. To my personal knowledge this boat was hauled completely out of the water in the year of 1925, at the Clayton Yards, and was put in first class condition at that time, and was also hauled out completely out of the water at Spencer Kellogg & Sons, Inc., plant in the winter of 1926, and which at that time it was completely overhauled including the overhauling of the engine, cork the seams and painting the entire boat.

M. C. DINKLE.

7038

Witnessed:
F. C. JOHANNES.

Sworn to and subscribed to before me this
22nd day of Dec. 1926.

JOHN F. WIELAND,
Notary Public, N. J.
(Seal)

Claimants' Exhibit NNN.

7039

Motor Boat "LINSEED KING"
(Our File No. A2160)

State of
Count of —ss.:

MARTIN DINKLE, being duly sworn, deposes and says:—

I reside at 1527 Boulevard East, Guttenberg, New Jersey, and at the present time I am employed by Spencer Kellogg and Sons, Inc. as chauffeur.

I had been employed as operator of the "Linseed 7040
King" by Spencer Kellogg and Sons for a period of over three years. When I first came to work for Spencer Kellogg and Sons and took charge of the boat, John Brown, so far as I know, was not employed at the plant and certainly had nothing to do with the operation of the boat. The boat he operated was a navy hull which was also named "Linseed King" and which was operated before the present boat was put in commission. The man before me, I think, was a man named Bendel. I continued as operator of this boat until about two months before the sinking. 7041
At that time I had some misunderstanding with Mr. Balz. The difficulty arose through gossip at the plant which led me to believe that Mr. Balz was not giving me fair treatment. I went to Mr. Stover, Works Manager, about the trouble and he told me to return to work and forget about my troubles. I felt from the way things were going that I was not wanted at the plaint and I quit. After I left Spencer Kellogg and Sons I went to work for Mr. Floyd Clayton who was the builder of the "Linseed King". I have had con-

7042 siderable experience around boat yards and had worked for Mr. Clayton's father, C. W. Clayton, at his shipyard. I left Mr. Clayton, Sr., before he started building the "Linseed King".

While I was working for the Company, DeGraff came to work as garage mechanic. He worked at the plant for a period of about two months. My impression of DeGraff is that he was a heavy drinker. During the day he would leave his job and go to the saloons nearby, and drank considerably. I do not know why he was discharged but it is general understanding that it was be-
7043 cause he drank so heavily.

The "Linseed King" was hauled out of the water about in March, 1926. Her engines were overhauled at that time by Mr. Balz. Mr. DeGraff started to take the engine apart to overhaul it but Mr. Balz completed the job. I myself attended to the caulking of the hull. The boat was in very good condition at that time and required little caulking. We scraped her and painted her. I have had seven years' experience in shipyards and my work consisted of hull construction, caulking, painting and general repair work on wooden hulls. The reason why the boat was in such good
7044 repair was that she had been hauled out the September previous at the Royal Boat & Barge Repair Company, 142nd and 143rd Street and Harlem River. Prior to that time she had had a collision with a boat of the Atlantic Lighterage Company and when the repairs were made to the collision damage, she was also completely overhauled and her bottom painted. In my opinion as a boat builder, the hull of the "Linseed King" was in first class condition at the time I left the employ of the Company. I know that she was an un-

usually strongly built boat, as were all of the boats which Mr. Clayton built. 7045

Referring to Mr. DeGraff, I never saw him after he left the employ of Spencer Kellogg. I understand that he has made a statement to the effect that I quit because the boat was not in fit condition to run. This statement is absolutely untrue as I know that the boat was in very good condition.

Before the pilot house was put on the "Linseed King", I had seen 100 men crowded into her cabin. That is the limit which the boat would carry and it was very unusual for the boat to have that many. I permitted this only once and from that time on I would not allow over 80 men on the boat. With 80 men the boat would be somewhat crowded. When I speak of the number of men that I carried I referred to times prior to the installation of the pilot house. When the new pilot house was put on the "Linseed King", it cut down her carrying capacity because a large part of the space toward the bow was taken up by the pilot house and the space allowed for the captain. I should say that the pilot house would cut down her carrying capacity by about 10 men. 7046

The life preservers were mostly carried under the top of the cabin. There were about 30 piled on the seats at the after end of the boat. These were piled up for the width of one life preserver at the end of each set of seats. 7047

I understand that Brown has made the statement that the boat was unsteady and rolled. This boat was not a round bottom boat. It would be impossible for such a boat to roll to any great extent. As a matter of fact, this boat was very steady and any statement to the contrary is not

7048 true. The boat was light. The part which is plated would be out of water along the side of the boat at the forward end near the bow, but at the bow I should say about 1½ widths of the plating would be out of water.

From my own observation, I should say that a load of 80 men in this boat would not cause her to go down more than six inches if she was loaded on even keel. If the passengers on the boat were evenly distributed throughout the cabin, the boat would trim about even. The statement that she had a tendency to trim by the head is

7049 not true. The only way this would be possible would be if the men were all standing forward of the engine, or at least a greater part of the men standing forward than were standing aft.

I should like to add that during the time I was in charge of this boat I continually had trouble with the shift of men who were on the "Linseed King" on the day she sank. They would not do as I asked them. They would crowd to the front of the boat and they were uncontrollable. I reported this fact to Mr. Stover. On a number of occasions I kept the boat at the dock and would not leave until they did as I told them,

7050 that is until they would take a proper position in the boat, because I would not run the boat if she was loaded by the head.

MATTHEW DINKEL.

Sworn to before me this
1st day of February, 1927.

JOHN F. WIELAND,
Notary Public,
New Jersey.
(Seal)

Claimants' Exhibit QQQ.

			7051
3100	C. BREMER	December 19, 1926	
3101	T. CONNELLY	December 19, 1926	
3106	P. MIPCHECIA	December 19, 1926	
3112	T. JONES	December 19, 1926	
3113	W. KENNY	December 19, 1926	
3114	G. WILLIAMS	December 19, 1926	
3115	H. GOULD	December 19, 1926	
3117	B. JAMES	December 19, 1926	
3122	J. MARSHALL	December 19, 1926	
3126	J. BOYER	December 19, 1926	
3129	J. HEAP	December 19, 1926	
3131	P. WESLEY	December 19, 1926	
3132	J. BASSETT	December 19, 1926	7052
3133	A. DOUGHERTY	December 19, 1926	
3134	M. BURNETT	December 19, 1926	
3139	J. DOBROSKY	December 19, 1926	
3148	A. MURPHY	December 19, 1926	
3149	R. PROBEN	December 19, 1926	
3151	P. SAUR	December 19, 1926	
3152	M. GONZALEZ	December 19, 1926	
3154	R. AMLAW	December 19, 1926	
3155	G. SUNS	December 19, 1926	
3157	J. SULLIVAN	December 19, 1926	
3159	W. ICE	December 19, 1926	
3163	L. LONGER	December 19, 1926	7053
3169	M. O'SHEA	December 19, 1926	
3170	F. LUDWIG	December 19, 1926	
3171	L. JACKSON	December 19, 1926	
3172	D. HICKS	December 19, 1926	
3173	J. WESTON	December 19, 1926	
3174	A. COOPER	December 19, 1926	
3175	W. HUDDY	December 19, 1926	
3177	W. MCCABE	December 19, 1926	
3179	G. STRAIN	December 19, 1926	
3182	B. RAMSLAND	December 19, 1926	

7054	3201	ED MORRISON	December 19, 1926
	3217	J. GOBERT	December 19, 1926
	3232	M. NOALAN	December 19, 1926
	3240	D. BLEVINS	December 19, 1926
	3248	C. MEYER	December 19, 1926
	3404	J. NOLSON	December 19, 1926
	3405	A. SPECTOR	December 19, 1926
	3407	M. BURNETT	December 19, 1926
	3409	C. LINDHAMER	December 19, 1926

Claimants' Exhibit TTT.

7055 (Do not fold or roll this report)

POLICE DEPARTMENT
City of New York

SUPPLEMENTARY COMPLAINT REPORT

Crime Classification: Homicide, Arrest.
Detective Bureau Branch: 5th D. D.
Precinct: 12th Squad.
Complaint Number: 1735.
Date of this Report: 12-30-26.
7056 Heretofore this case was classified as follows:
Name of Complainant: People of State of N. Y.
Address of Complainant: N. Y. City.
Date of First Report: 12-20-26.

The following is a list of the 30 bodys removed to Morgue on Dec. 20th, 1926, victims of the "Linseed King", and names of those who identified same.

1: Abe Burke, 35 Years, Black, Identified #46 West End Ave., Identified by his wife Delia Burke,

Claimants' Exhibit TTT.

#46 West End Ave., Body removed from Morgue, Aided Case #3737—12th Precinct, M. P. Bureau, M. P. 15028. 7057

2: Harold Stevenson, 21 Years, White, #215 West 23rd Street, Identified by J. H. Pettyes, Y. M. C. A., #215 West 23rd Street, Body removed from Morgue, Aided Case #3738—12th Precinct, M. P. Bureau, Dead #796.

3. James Bassett, 42 Years, White, #160 Bleecker Street, Identified by James Brady, #507 West Street, Body removed from Morgue, Aided Case #3735—12th Precinct, M. P. Bureau, M. P. #15024. 7058

4: Uriah A. Pusey, 36 Years, Black, #145 West 145th Street, Identified by Charles A. Cousin, #2484—7th Ave., Brother in Law, Body removed from Morgue, Aided Case #100—71st Pct., M. P. Bureau, Dead #800.

5: Thomas Connolly, 28 Years, White, #307 East 77th Street, Identified by Patrick Connolly, #307 East 77th Street, Brother, Body removed from Morgue, Aided Case #98—71st Precinct, M. P. Bureau, Dead #798. 7059

6: David Hicks, 65 years, White, #7428 Woodside Ave., Jackson Heights, L. I., Identified by Nellie Hicks, Daughter, #7428 Woodside Ave., Jackson Heights, L. I. Aided Case #97—71st Precinct, M. P. Bureau, Dead #797, Body removed.

7: Balfour Corriete, 32 Years, Black, #359 Osborn Street, Bklyn., N. Y., Identified by An-

7060 gelina Curriete, #359 Osborn Street, Bklyn., N. Y., Sister, Body removed from Morgue, Aided Case #108—71st Precinct, M. P. Bureau, Dead #808.

8: Anthony McGoldrick, 24 Years, White, #548 West 164th Street, Identified by James McGoldrick, #3216 Perry Ave., Bronx, Brother, Body removed from Morgue, Aided Case #107—71st Pct., M. P. Bureau, Dead. #807.

9: Frank Eberle, 44 Years, White, #114 West 78th Street, Identified by Bernard Van Ess, #114
7061 West 78th Street, Brother, Body removed from Morgue, Aided Case #106—71st Precinct, M. P. Bureau, Dead #806.

10: Arthur Johnson, 28 Years, Black, #51 East 98th Street, Identified by May Skeer, #51 East 98th Street, Friend, Body still in Morgue, Aided Case #103—71st Precinct, M. P. Bureau, Dead #803.

11: Samuel Daniels, 45 Years, Black, #10 East 118th Street, Identified by Mathilda Forte,
7062 #10 East 118th Street, Aunt, Body removed from Morgue, Aided Case #116—71st Precinct, M. P. Bureau, Dead #816.

12: David Clark, 34 Years, Black, #410 St. Nicholas Ave., Identified by Ignatious F. Dubriss, #138 West 129th Street, Cousin, Body removed from Morgue, Aided Case #102—71st Precinct, M. P. Bureau, Dead #802.

13. Roy Amlaw, 42 Years, White, #110 West 100th Street, Identified by Mary Amlaw, #110

West 100th Street, Wife, Body removed from Morgue, Aided Case #115—71st Precinct, M. P. Bureau, Dead #815. 7063

14: Ernest Boyer, 34 Years, White, #202 East 11th Street, Identified by Raymond Boyer, #202 East 11th Street, Brother, Body removed from Morgue, Aided Case #114—71st Precinct, M. P. Bureau, Dead #814.

15: Joseph Dobranski, 40 Years, White, #304 3rd Ave., Identified by Michael Dobranski, Millbrook, N. Y., Brother, Body removed from Morgue, Aided Case #113—71st Precinct, M. P. Bureau, Dead #813. 7064

16: Marcus Gonzales, 35 Years, White, #245 Canal Street, Identified by Julio Gaizon, #245 Canal Street, Friend, Body removed from Morgue, Aided Case #111—71st Precinct, M. P. Bureau, Dead #811.

17: George Nemeth, 28 Years, White, 237 East 108th Street, Identified by Stephen Nemeth, #301—27th Street, Guttenberg, N. J., Brother, Body removed from Morgue, Aided Case #112—71st Precinct, M. P. Bureau, Dead #812. 7065

18: Juan Fernandez, 31 Years, White, #417 West 53rd Street, Identified by Julius Martin, #417 West 53rd Street, Friend, Body still at Morgue, Aided Case #123—71st Precinct, M. P. Bureau, Dead #823.

19: James Alexander, 30 Years, Black, #138 West 129th Street, Identified by Gerard King,

Claimants' Exhibit TTT.

7066 #72 West 142nd Street, Cousin, Body removed from Morgue, Aided Case #122—71st Precinct, M. P. Bureau, Dead 822.

20: Carl B. Boskro, 43 Years, White, #100 West 99th Street, Identified by Albin Johnson, #100 West 99th Street, Friend, Body removed from Morgue, Aided Case #121—71st Precinct, M. P. Bureau, Dead 821.

21: Louis T. Herrera, 30 Years, White, #417 West 53rd Street, Identified by Julius Martin, #417 West 53rd Street, Friend, Body removed
7067 from Morgue, Aided Case #120—71st Precinct, M. P. Bureau, Dead #820.

22: Domingo Mesa, 28 Years, White, #793 Washington Street, Identified by Marie Mesa, #793 Washington Street, Cousin, Body removed from Morgue, Aided Case #119—71st Precinct, Dead #819.

23: John Hartman, 34 Years, White, 433 West 124th Street, Identified by William A. Hartman, #433 West 124th Street, Brother, Body removed
7068 from Morgue, Aided Case #118—71st Precinct, Dead #818.

24: Paul Saul, 45 Years, White, 227 East 78th Street, Identified by Edward Bielefeld, #227 East 78th Street, Friend, Body still at Morgue, Aided Case #117—71st Precinct, M. P. Bureau, Dead #817.

25: Joseph Hamilton, 27 Years, Black, #9 West 114th Street, Identified by S. R. Juliett,

#127 West 135th Street, Friend, Body removed from Morgue, Aided Case #101—71st Precinct, M. P. Bureau, Dead #801. 7069

26: George Sims, 27 Years, Black, #127 West 127th Street, Identified by Genevieve Sims, Wife, #127 West 127th Street, Body removed from Morgue, Aided Case #99—71st Precinct.

27: Mario Morales, 28 Years, Black, #95 Perry Street, Identified by Mary Morales, #95 Perry Street, Body removed from Morgue, Aided Case #109—71st Precinct, M. P. Bureau, Dead #809. 7070

28: Thomas Brennan, 30 Years, White, No address, Nearest of kin Mrs. Cavanagh, Waterford, Ireland, Identified by Gordon Smith, Steamship "Minnekahda", Pier 58, North River, Body still at Morgue, Aided Case #105—71st Precinct, M. P. Bureau, Dead 805.

29: Unknown: Male, White, 55 Years, 5 Ft. 5 In. 150 Lbs., Brown eyes, Mixed grey Hair, Ruddy complexion, Poor teeth, Dark grey, ulster overcoat, Blue short coat, Blue vest, Blue trousers, Black lace shoes, Brown socks, Tan Kaki and also a White shirt, White cotton underwear, Black leather belt, White metal buckle. Aided Case #104—71st Precinct, M. P. Bureau, Dead #804, Body at Morgue. 7071

30: Unknown: Male, White, 55 Years, 5 Ft. 6 In., 160 Lbs., Blue eyes, Sandy grey hair, Upper front tooth missing, 2 front teeth missing in lower, Dark grey overcoat, Blue serge short coat, Blue serge vest, Dark grey trousers, Black lace shoes,

Claimants' Exhibit TTT.

7072 Black socks with white stripes, Kaki shirt, Blue overalls, White union suit underwear, Purple suspenders, Aided Case #110—71st Precinct, M. P. Bureau, Dead #810. Body at Morgue.

Autopsy was performed on the bodys of three of the above mentioned deceased by Dr. Vance of the Medical Examiners Office who stated that Dead had been caused by Submersion, Suffocation 1 Hour, All other bodys were signed out by Dr. Vance on these three autopsys.

Case still under investigation:

Has complainant been informed of police action
7073 to date in this case? Yes.

Disposition of this case. Case active. Arrest.

JAMES E. DONNELLY,
Signature of Detective.

PATRICK J. CURLEY,
Signature of Commanding Officer.

NOTES

1. Each complaint, investigation, or missing person case in which final action has been taken, or in which there have been important developments, prior to final action, shall be made the sub-
7074 ject of a supplementary report. When final action has been noted on original complaint report no supplementary report is necessary.

2. Prepare this report in duplicate, forward the original copy and retain the duplicate in the branch office.

3. The Precinct number and the complaint number shall be the same as appears on the original complaint report.

Petitioner's Reference Exhibit 2.

4. If the crime classification has been changed from that shown on prior reports, give both the revised classification and the classification heretofore used. 7075

5. Spell complainant's name correctly. If it was incorrectly spelled on original report, give the original spelling as well as the corrected spelling.

Petitioner's Reference Exhibit 2.

CHARLES BURNES 7076

Clock No. 622

Date of Employment
Monday
August 9th 1926

Week Ending (1926)	Hours Worked	Earnings Rate	Earnings Amount
8/14	48	.62	$29.76
8/21	48	.62	29.76
8/28	48	.62	29.76
9/4	48	.62	29.76
9/11	48	.62	29.76
8/18	48	.62	29.76
9/25	48	.62	29.76
10/2	48	.62	29.76
10/9	48	.62	29.76
10/16	48	.62	29.76
10/23	48	.62	29.76
10/30	48	.62	29.76
11/6	48	.62	29.76
11/13	48	.62	29.76
11/20	48	.62	29.76

7077

Petitioner's Reference Exhibit 2.

7078

Week Ending (1926)	Hours Worked	Earnings Rate	Earnings Amount
11/27	24	.62	14.88
12/4	48	.62	29.76
12/11	48	.62	29.76
12/18	48	.62	29.76
Total Earnings			$550.56
Average Weekly Earnings			28.98

SPENCER KELLOGG AND SONS
H. J. ALDRICH
7079 Secretary

Similar abstracts of payroll record are in evidence in each of the cases relating to the claims referred to the New Jersey Workmen's Compensation Bureau by the District Court, varying as to date of employment, hours worked, rate of wages, amount earned and employment number.

7080

Petitioner's Reference Exhibit 3.

7081

FRED LUDWIG Clock No. 2170

Date of Employment:
Friday,
December 17, 1926.

Reported for work December 18, 1926. Ship not arrived.

Reported for work December 19, 1926. Ship not arrived.

SPENCER KELLOGG & SONS, INC.
H. J. ALDRICH,
Secretary. 7032

Similar abstracts of payroll record are in evidence in each of the claims relating to men who are referred to as "Saturday men".

Petitioner's Reference Exhibit A (Sullivan Case).

No. 3157
WEEK ENDING 192

Tear off this coupon and present it for wages on pay day. If lost, report at once to Payroll Dept. 7083

(Reverse Side)

Received From
SPENCER KELLOGG & SONS, INC.

$.....FOR WAGES, IN FULL.

.....
SIGN HERE BEFORE PRESENTING.

Stipulation as to Exhibits.

7084 UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

In the Matter
of
The Petition of SPENCER KELLOGG & SONS, INC., as owner of the Motorboat "LINSEED KING", her engines, etc., for Limitation of Liability, Civil and Maritime.

7085 IT IS HEREBY STIPULATED AND AGREED that all the exhibits used at the trial and at the reference before the Special Commissioner which are not printed herein, need not be reproduced in the printed record.

IT IS FURTHER STIPULATED AND AGREED that these exhibits may be handed up on the argument of this appeal with the same force and effect as though incorporated herein.

Dated, New York, May , 1931.

7086 ELIZABETH ROBINSON and
LUCIEN V. AXTELL,
LESTER HAND JAYNE,
KURZMAN and FRANK,
WILLIAM O'DWYER,
CHARLES KENNEDY,
OELAND and KUHN,
MAX GELLES,
Proctors for Claimants.

BIGHAM, ENGLAR, JONES & HOUSTON,
Proctors for Petitioner.

Stipulation as to Record.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK. 7087

In the Matter

of

The Petition of SPENCER KELLOGG & SONS, INC., as owner of the Motorboat "LINSEED KING", her engines, etc., for Limitation of Liability, Civil and Maritime.

IT IS HEREBY STIPULATED AND AGREED that the foregoing is a true transcript of the record of the 7088
said District Court in the above entitled matter, as agreed on by the parties, and contains all the testimony material to the hearing and determination of the questions presented by the several appeals.

Dated, New York, May , 1931.

ELIZABETH ROBINSON and
LUCIEN V. AXTELL,
LESTER HAND JAYNE,
KURZMAN and FRANK,
WILLIAM O'DWYER,
CHARLES KENNEDY, 7089
OELAND and KUHN,
MAX GELLES,
Proctors for Claimants.

BIGHAM, ENGLAR, JONES & HOUSTON,
Proctors for Petitioner.

Clerk's Certificate.

7090

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

The Petition of SPENCER KELLOGG & SONS, INC., as owner of the Motorboat "LINSEED KING", her engines, etc., for Limitation of Liability, Civil and Maritime.

7091

United States of America,
Southern District of New York—ss.:

I, CHARLES WEISER, Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

IN TESTIMONY WHEREOF, I have caused the seal
7092 of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this day of April, in the year of our Lord one thousand nine hundred and thirty-first and of the Independence of the said United States the one hundred and fifty-fifth.

CHARLES WEISER,
Clerk.

(Seal)

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

In re SPENCER KELLOGG & SONS, INC.; Ex Parte HILDA M. HICKS, as Administratrix, et al.

Before L. Hand, Augustus N. Hand, and Chase, Circuit Judges

Appeals by the petitioner and certain of the claimants from a final decree of the District Court for the Southern District of New York in a proceeding to limit liability for the deaths and personal injuries of a number of passengers upon the petitioner's launch, "The Linseed King".

D. Roger Engler for Spencer Kellogg & Sons, Inc.
Elizabeth Robinson for Burns et al.
Lester Hand Jayne for McEachin et al.
Samuel B. Seidel for Ilfill et al.
George W. Riley for Hicks, Administratrix.

OPINION

L. HAND, Circuit Judge:

Spencer Kellogg & Sons, Inc. is a New York corporation engaged in the manufacture of linseed oil, with its principal place of business in Buffalo, where live its chief executive officers. It has however a number of factories in other places, among which is one at Edgewater, New Jersey, on the west shore of the Hudson River opposite Ninety-sixth Street, Manhattan, whence it draws many of its workmen. In order to carry these across to its factory it had maintained a motor-boat, called "The Linseed King", a launch forty-five feet long with a beam of ten feet, equipped with a gasoline engine. This had a small wheel-house forward, slightly raised above the floor of the inclosed cabin which occupied most of the deck space. The sides of the cabin were glass windows, nine on each side, two at each end of each side being movable for ventilation, and allowing a doubtful egress. Two doors, one on each side, gave upon the deck just abaft the wheel house, which was separated from the cabin by an iron railing. A third door, double, opened

upon the deck at the after end of the cabin; to each door led a short companionway of a few steps, the cabin's deck being below the main deck. Along each side of the cabin ran a seat, capable of holding about eighteen men.

It was the custom of the company to send the launch from Edgewater in the early morning to receive workmen at the Manhattan shore, and carry them back to the factory before work began. In the past it had often been much crowded, over eighty men at times finding room to sit or stand in the cabin, whose total superficial area including the wheel-house, was but two hundred and thirty-three square feet, of which the seats took up about one-third. The accident, which is the subject of this suit, happened on Monday morning, December 20, 1928, and arose in the following way. The launch left the Jersey shore before daybreak in charge of one, Rohweder, an experienced man, who had been substituted for another some weeks before. In Manhattan there joined him a chauffeur, named Roberts, detailed to give him general assistance, whom we may consider as a deck-hand. When Rohweder came to the New York shore he met drift ice which had come down the river on the tide during the night, driven upon the east shore by the west wind. He pushed through and at Manhattan found a crowd of expectant workmen waiting to be ferried across. How many he and Roberts took on board was not, and in the nature of things, could not be, surely fixed, but the district judge found the number to be seventy-eight, and of this the company does not complain. It is as nearly right as the nature of the evidence allows; we have no warrant to disturb it. The launch then got under weigh, and successfully passed through the thicker part of the ice upon her return. When Rohweder thought himself clear, and while at a speed of about seven miles an hour, the launch struck a cake or floe of ice which stove a hole in her port bow about eight by sixteen inches. The evidence as to what struck her is necessarily a little doubtful; it was quite dark and Rohweder could not tell. However, there was still ice about, and the probabilities are too strong to justify upsetting the judge's finding that this caused the hole. The launch at once began to fill and sank in about two minutes. In the interval the workmen fell into a panic, scrambling for the outlets, through which a number of them escaped. Although there were eighty life-preservers on board, either

the press prevented the men from reaching them, or their fright paralyzed their judgment. Nevertheless, a number, thrown into the water, reached floating cakes of ice, and were eventually rescued after much exposure. How many were lost was never learned with certainty, and is immaterial to the purposes of this appeal; thirty-five bodies were found.

Some of those injured, and the administrators of some of those drowned, brought actions in the New York courts against the company; others made claim and threatened suit, so that the situation was apt for a proceeding to limit liability. The company filed its petition in March of 1927 and prayed an injunction against all proceedings upon any claim, including claims for workmen's compensation under the New Jersey act, except that these might be filed. On the next day it obtained the usual injunction pendente lite in the same terms, covering not only the claimants themselves, but the New Jersey commission. It surrendered the launch which had been raised, and had a value of fifteen hundred dollars, and procured an order of reference to a commissioner to receive claims. These the claimants filed in due course, and answered the petition, denying the right to limit.

The issues so arising came on for hearing before Hazel, J., and a large amount of evidence was taken, at the conclusion of which he denied the right to limit, and referred the liquidation of all claims to a new commissioner, who heard more evidence and reported back to the court. This report came on for hearing upon exceptions before Patterson, J., who confirmed some of the awards as fixed, and changed others. No question is raised as to the amounts. Those claimants whom he found to have been in the company's employ, he remitted to their claims under the New Jersey workmen's compensation act, except the administrator of Roberts, who as a maritime worker he thought not subject to state law. The rest recovered general indemnity.

The company appealed because of the denial of its limitation, and for the failure to remit to compensation those claimants who had already applied for work on Saturday, and had been told to come back. The claimants who had been awarded only compensation, also appealed. They argued that their contracts were from day to day, and that they were not employed till they reached the factory. Fur-

thermore that the compensation act could not apply to a suit in the admiralty, and that if it did, the conduct of the company in enjoining them pendente lite from prosecuting their awards was a repudiation of the contract of compensation on which they were entitled to elect to invoke the company's general liability. The issues therefore are; the right to limit; which claimants are covered by the compensation act; its effect in the admiralty; the right of the company to invoke it.

The chief of these is the right to limit, which the company now agrees should not extend to compensation. As to this, the fault must be of an officer high enough in control to charge the company personally. Stover, the manager of the factory at Edgewater, was in that position. He was indeed under the direction of the chief officials in Buffalo, who made frequent visits to Edgewater, and always maintained supervision of this, as of all the other plants, but in their absence he was in charge, and it is not open to doubt that for any fault of his the company was personally liable; (In Re Jeremiah Smith & Sons, 193 Fed. Rep. 395, (C. C. A. 2); In Re P. Sandford Ross Inc., 204 Fed. Rep. 248, (C. C. A. 2); Eastern S. S. Corp. v. Great Lakes etc. Co., 256 Fed. Rep. 497, (C. C. A. 1); Parsons v. Empire Transp. Co., 11[illegible] Fed. Rep. 202, (C. C. A. 9); In Re Pennsylvania R. R. Co., 48 Fed. (2) 559, (C. C. A. 2) (semble)). It is immaterial whether he disregarded his instructions. His fault charged his principal as though the limitation statute did not exist.

The officials at Buffalo had recognized that the launch was not fit to encounter ice, and had directed Stover to discontinue her service as soon as it appeared in the river. Indeed, while she may have been fit to pass through slush, the company's own witnesses conceded that she should not have been exposed to floes or heavy cakes. It was a fault to allow her to go out, when there was reasonable expectation that such ice might be met. The weather had been unseasonable in New York during the first week of December, about fourteen degrees below the usual range, and at an average minimum of about 14° F. Presumably it was colder in the reaches of the Hudson above Manhattan Island. During the next week the cold abated, the minimum being just below freezing and the mean well above. This was a condition which would release any ice formed above, and allow its slow descent. The third week turned cold

again, rising only once to freezing, and running as low as seven degrees on the eighteenth. On that day, Saturday, ice came down below Ninety-sixty Street on the Manhattan shore, but by the weight of the evidence none was observed opposite Edgewater on Sunday, and we may take it that at sundown there was no reason to believe that the river was not clear at that point, though there was much ice not many miles above, with knowledge of which Stover was chargeable.

Rohweder, we are to assume, was a competent man. He had instructions from Stover not to press through ice, and if these were enough, it is impossible to charge his superior with fault. We think that they were not. The degree of care exacted in any situation depends, not only upon the likelihood of injury, but on its gravity if it comes. Laying aside the question whether it was of itself a fault to crowd so small a boat with so many men—whatever may be the practice in New York Harbor—it is at once apparent that their safety is at the risk of any mishap. They were sure in such weather to seek the cover of the cabin, where they must be huddled together in their overcoats, standing and sitting. The launch had been as full more than once before, and Stover knew that a crowd would be on hand, because a ship had arrived on Sunday which was waiting her discharge, and many men had been told on Saturday to come back. Such a launch in the dark of the morning could meet with no accident which would not be likely to spread panic, and cause death or injury to those on board, even though she did not sink and drown over half her company. If she did sink, there was no escape for more than a few at best, and the alternative for them was the icy waters of the river.

If employers are justified in undertaking such transportation at all, they must use the greatest of possible care; chances must be ruled out, though remote. We do not say that they can be so justified, but when such a craft, so crowded, is used at a season when ice is likely to be in the river, and has already been seen within forty-eight hours, nothing but the extremest precautions could exculpate anyone concerned in the venture, if even these will serve. Faced with such grave possibilities, it was not enough to leave the decision to a competent subordinate. It is difficult to excuse the failure en-

tirely to suspend the service on Saturday when the ice had once appeared, but if we are to suppose that anything could justify its continuance, Stover was bound to the most elaborate precautions, even if it involved going along himself. Perhaps this was not necessary; possibly inquires of the towing companies that morning would have served. What he should not have done was to leave the decision to the judgment of Rohweder. We hold that the company has not shown Stover free from fault.

Normally, the result would be to charge the company generally with all the ensuing loss, but this is complicated by the different relations which the men bore to it. Part of them had been regularly in its employ the week before. Their contract was of the ordinary sort, and they could have been turned off on Saturday, or, we may assume, at the end of any day. They had not been. Rather they came back on Monday in continuance of an employment which had persisted over the week end. There was no new "contract of hiring", (N. J. Workmen's Compensation Act § 9), when they appeared that day; they were going on with an existing contract, as they had from day to day theretofore. This appears to be the construction placed upon the statute by the New Jersey courts themselves; (Alberta Contracting Co. v. Santomassino, 150 Atl. Rep. 830).

The opposite is concededly true of those who for the first time boarded the launch on Monday morning in search of work, but there was a third class who had already appeared on Saturday, looking for work as stevedores to discharge the ship we have mentioned, expected that day, which did not, however, dock till Sunday. Having gone to the factory, these had been told to report back on Monday, when she would be in. They were given cards in evidence of the fact that they had already applied, which would entitle them to a preference when jobs were assigned. From this the company argues that they were already in its employ, and equally subject to the compensation act as its regular employees.

We think not. The New Jersey act does not assume to impose workmen's compensation upon both parties against their will. Section nine imputes an intent to both sides by contract to substitute its provisions unless they stipulate otherwise. It reads:

"Every contract of hiring * * * shall be presumed to have been made with reference to the provisions of section two of this act, and unless there be as a part of such contract an express statement in writing * * * that the provisions of section two * * * are not intended to apply, then it shall be presumed that the parties have accepted the provisions of section two * * * and have agreed to be bound thereby."

The employee releases his rights at common-law, or by statute, and in return gets a promise of compensation; the employer promises to pay compensation and receives the release. This result depends upon some "contract of hiring", without which the legal relations of the parties remain unchanged. That no such contract was made with these men on Saturday is too plain for debate. They were then assured of no work, of only a preference among those who might apply; at most any "contract of hiring" was conditional upon jobs, still unfilled, when they appeared. The New Jersey courts have gone to much greater lengths in treating such preliminary engagements as not within the act, (Sabella v. Lloyd Brasiliero, 86 N. J. L. 505, affirmed, 87 N. J. L. 710; Fineberg v. Public Service Company, 94 N. J. L. 55; Coco v. Wilbur, 104 N. J. L. 275). We find it unnecessary therefore to discuss the question whether the prospective employment of these men was maritime in such sense as to avoid the effect of the compensation act. They were not within it by its own terms.

That the regular employees suffered their injuries "in the course of their employment" is well settled by the New Jersey decisions. (Fisher v. Tidewater Bldg. Co., 96 N. J. L. 103; affirmed 97 N. J. L. 324; Soden v. Public Service Company, 4 N. J. Misc. 817, affirmed 103 N. J. L. 713; Bolos v. Trenton etc. Co., 102 N. J. L. 479; Alberta Contracting Co. v. Santomassino, 150 Atl. Rep. 830). Though Soden v. Public Service Company was affirmed without opinion by an equally divided court, the division was probably because of more doubtful points which were involved. The notion is that when the employer furnishes a conveyance to the employes to go to and from his work, the transit is part of the "course of employment". Whether as a new question this should be limited to such vehicles as he is required to board—as was the case in Van Gee v.

Kortz, 252 N. Y. 241—we need not decide; nor indeed does that decision seem so to limit the doctrine, though it mentions with approval the English law which is apparently so; (Anderson v. Hickman, 21 B. W. C. C. 369). The general rule in this country accords with New Jersey; (Donovan's Case, 217 Mass. 76; Sala v. American Sumatra Tob. Co., 93 Conn. 82; Wabnec v. Clemons Logging Co., 146 Wash. 409; Lamm v. Silver Falls Timber Co., 286 Pac. Rep. 527 (Ore.). In any case, as the question involves the construction of a statute, we are to follow the local interpretation.

The claimants argue that in a limitation proceeding in the admiralty the New Jersey law must yield, following those cases which began with Jensen v. So. Pac. R. R. Co., 244 U. S. 305. The point is not good. Though the locus of a tort in general controls jurisdiction in the admiralty, (Imbrovek v. Hamburg American Co., 234 U. S. 52), the "law of the sea", which no state may modify—so far as uniformity is required—does not govern all that takes place on navigable waters. In a number of decisions the Supreme Court has enforced compensation statutes, though the injury was not on shore; (Grant Smith-Porter Ship Co. v. Bohde, 257 U. S. 469; Miller's Indemnity Underwriters v. Braud, 270 U. S. 59; Rosengrant v. Howard, 273 U. S. 664; Alaska Packers Association v. Industrial Accident Com., 276 U. S. 467). It is only when the services which give the contract its color, are themselves maritime, that the doctrine comes into play; (Baizley Iron Works v. Span, 281 U. S. 222). The regular employees had no maritime duties; they merely chanced to be on the water when injured.

Had the statute affected to substitute compensation for liabilities arising under New York law, regardless of the parties' will, we might indeed be obliged to deny it any extra territorial effect; the power of a state is ordinarily limited by its borders. On the other hand, if there had been an express contract between the parties, we can see no difficulty in its enforcement elsewhere, provided the parties intend it to have that scope. To be sure, the effect of the workman's agrement to release his rights must be determined by the law of the place where they arise, (Restatement of Conflict of Laws, § 396 E), but if the agreement be valid where made, there could be no reason for not enforcing it, unless

it be abhorrent to the policy of the state where the injury occurs.

Since the New Jersey statute imputes a contract from the employment alone, it is a fiction to say that the parties truly contract. In general, indeed, the law does impose that meaning upon any promise which seems to it best, regardless of the promisor's actual intent, but the meaning it chooses depends upon what an ordinary person, set as the promisor, would have understood by the words used. Yet it would make no difference under the New Jersey act that neither party knew of its existence; he would be equally bound. Whatever the guise, no actual contract is made, save by accident and in especial instances. It might therefore have been held that such statutes created obligations ex proprio vigore, to which another state need give no extra-territorial effect, and it is in part for this reason that they have raised a good deal of confusion in the books. However, only two questions arise here; whether the act was intended to apply to liabilities arising elsewhere, and if so, whether the courts of New York recognize its effect. The first is answered by Rounsaville v. Central R. R. of N. J., 87 N. J. L. 371; the second by Barnhart v. American Concrete Steel Co., 227 N. Y. 531. It is quite true that the reasoning in the New York case proceeds on the assumption that there is an actual contract, but it is of no consequence whether or not we might agree. It establishes the law of New York and while strictly it may not be controlling upon us, we can see no reason for not following it here. Certainly there is no such clear current of authority, which could justify our declaring that there was any principle of "general law" to the contrary. Indeed, as mere matter of principle, while it is true that the obligation is imposed without the parties' consent, it is not in invitum; the obligor may escape it at will. Such obligations certainly are in a midground between contracts, stricti juris, and involuntary liabilities. It would be presumptuous for us to hold that the courts of New York which treated them as a bar to liabilities arising in that state, violated any doctrine of the conflict of laws.

There remains only the claimants' objection that, granting all that we have decided, the company repudiated its obligation under the New Jersey compensation act, and

left them free to elect to stand upon their rights at common-law or under the New York death statute. Were we to look upon the obligation to pay compensation as not contractual, the answer would be simple. No equity prevented the company from asserting the release. All that happened was that it had got a stay pendente lite of the compensation claims. This was in March, 1927, and the trial came on in the following January. For ten months the claimants had thus been held up, but no longer, because on the first day of the trial the company's advocate declared that it stood ready to pay workmen's compensation to all its employees. Nothing had meantime hapened, and the delay was of no consequence to the claimants who themselves repudiated compensation awards and demanded damages. The company's action had not prejudiced whatever rights they had.

If, however, we are to deal with the case as though there was really a contract, as no doubt we must, considering the views of the courts of New Jersey and New York, other considerations apply. The claimants' theory in that case must be that in filing their claims in this proceeding they elected to seek restitution upon the company's breach or reputation; restitution in this case being a cancellation of their release, which would restore them to their rights under New York law. The remedy presupposes a repudiation, or at least a substantial breach by the promisor; (Canal Co. v. Gordon, 6 Wall. 561; Farmers L. & T. Co. v. Galesburg, 133 U. S. 156; Guerini Stone Co. v. Carlin Stone Co., 248 U. S. 334, 342-343); and while a delay in payment for ten months might be a substantial breach, in this case it was excused. The company did not refuse to pay at all; it applied to the court on a true statement of the facts and took advantage of its order. It is true that the order was mistaken, but it was none the less an excuse for the breach while it stood. It was the court, not the company, which prevented the claimants from proceeding; it was the court which declared that the company need not pay at once. True, the company had procured the order, and was its author in a sense which would have associated it in responsibility, had the court been a juristic person. It was not, and the company was insulated from legal liability. Anyone who acts honestly and does not subject himself to a charge of malicious prosecution is as free from liability

in invoking the action of a court as the court itself, and what he does under its order is not a wrong. The party aggrieved has no remedy except in so far as the court may have protected him by bond or otherwise, as a condition upon the order, and as security against its own errors: Meyer v. Block, 120 U. S. 206, 211; Tenth Ward Road Dist. v. Texas & Pac. R. R. Co., 12 Fed. (2) 245, (C. C. A. 8); American Circular Loom Co. v. Wilson, 198 Mass. 182; Yonkers v. Fed. S. B. Co., 221 N. Y. 206; Tilton v. Sharp, 146 Atl. 159, (N. H.); Rieger v. Knight, 128 Md. 189; Jacobs v. Greening, 109 Kan. 674; Hayden v. Keith, 32 Minn. 277. These decisions did not concern contracts, it is true, but if a tort is excused by an injunction, there can be no reason to treat otherwise a breach of contract; and so it was held in the only case we have found, (Bedell v. Harris, 228 App. Div. 529). New York v. Brown, 179 N. Y. 303, is not to the contrary. It may constitute an unjust enrichment to retain benefits secured by the injunction, though the acts or omissions which it excuses are not themselves actionable wrongs. That doctrine has no application here.

There was therefore no basis for disaffirmance by the claimants. Moreover, many of them were in no position to disaffirm, if there had been. Those who had already made claim or sued for damages, committed the first breach. This precluded their disaffirmance; (White Oak Fuel Co. v. Carter, 257 Fed. Rep. 54, (C. C. A. 8); Stadelmann v. Boothroyd, 170 Minn. 420; Ashbrook v. Hite, 6 Ohio St. 357; Ketchum v. Evertson, 13 Johns. 359; Schmidt Bros. Const. Co. v. Raymond, 180 Ia. 1306, Williston § 1468). Of the rest, many were administrators appointed in New York. They were not the parties entitled to compensation under the New Jersey compensation act, (§ 12 g), and could not disaffirm a contract of which these were the beneficiaries, (In Re Balais, 189 App. Div. 408, affirmed 228 N. Y. 507). A few indeed there are, who are neither administrators, nor first broke their compensation contracts; but, though these might have disaffirmed, had there been an unexcused breach, they never elected to do so. The claims themselves suggest nothing of the sort, and they are susceptible of quite another interpretation—the true one. The claimants supposed, and still maintain, that the compensation act did not cover their case at all, and they claimed damages for that reason. They have never there-

fore manifested any intention to disaffirm, as they must do either in their suit or before, (Hennessy v. Bacon, 137 U. S. 78; Williston § 1469). The regular employees were therefore correctly limited to compensation.

The case of Roberts is an exception; the district judge thought that he was engaged at the time in maritime service, and was for that reason outside the scope of the compensation act. It is true that his work appears to have been only for the occasion; but nothing turns on that, if it was of a kind to which the law of the sea applies. On the whole we think it must be so regarded; his duties, as we have said, were most like those of an ordinary deck-hand, though the craft was small. As to him, while engaged in that service, the compensation act could not apply under the decisions we have cited. It follows that the disposition by Patterson, J. of all the claims was correct.

It is somewhat faintly suggested that he should have retained jurisdiction over the compensation claims, and not remitted the claimants to the New Jersey commission. Taken literally, some of the language in Hartford etc. Co. v. So. Pac. Co., 272 U. S. 207, might be read as going so far, but we cannot suppose that it is to be pressed to that extent. The district court was in no position to take charge of such awards, and could not close the case for nearly six years, if it had, since the death compensation extends for that time (§ 12 k). Furthermore, distribution among dependents is to be as the commission shall determine (§ 12 h). To those injured payments are likewise made seriatim. There is a machinery set up for all this, an inherent part of the contract itself, which a court would violate, should it undertake to substitute itself for the commission. All that it could do was to decree that the parties should be free to prosecute their compensation in the usual way. This it did.

Decree affirmed.

IN UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

In the Matter of Petition of SPENCER KELLOGG & SONS, INC., as Owner of the "Linseed King", for Limitation of Liability, SPENCER KELLOGG & SONS et al., Appellants

DECREE—Filed July 31, 1931

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the — of said District Court be, and it hereby is, affirmed, with interest and with costs to claimants-appellees Ifill, Barker and Norgrove, and claimant appellee Hicks, as administratrix.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[File endorsement omitted.]

Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1931

No. 430

SPENCER KELLOGG & SONS, INC., as Owner of the Motorboat "Linseed King," etc., Petitioner,

vs.

HILDA M. HICKS, as Administratrix, etc., et al.

ORDER ALLOWING CERTIORARI—Filed November 23, 1931

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is

granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1931

No. 444

VERA ALEXANDER, Administratrix of the Estate of James Alexander, Deceased, et al., Petitioners,

vs.

SPENCER KELLOGG & SONS, INC.

ORDER ALLOWING CERTIORARI—Filed November 23, 1931

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 36,244, 36,258. U. S. Circuit Court of Appeals, Second Circuit. Term No. 430. Spencer Kellogg & Sons, Inc., as owner of the motorboat "Linseed King," etc., petitioner, vs. Hilda M. Hicks, as administratrix, etc., et al. Term No. 444. Vera Alexander, administratrix of the estate of James Alexander, deceased, et al., petitioners, vs. Spencer Kellogg & Sons, Inc. Petitions for writs of certiorari and exhibit thereto. Filed October 2, 1931, October 7, 1931. File No. 36,244, 36,258.